APPENDIX

Supreme Court, U. S.
FILED
MAY 28 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-628

ALLENBERG COTTON COMPANY, INC.,
Appellant,

v.

BEN E. PITTMAN,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DOCKETED AUGUST 8, 1973
AND MARCH 25, 1974 PROBABLE JURISDICTION
POSTPONED TO HEARING ON THE MERITS

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SUPREME COURT OF THE STATE OF MISSISSIPPI

Record No. 47,037

Chancery Court, Quitman County, Mississippi

Ben E. Pittman

v.

Allenberg Cotton Co.

Filed: May 25, 1972

Julia H. Kendrick, Clerk

Yvonne P. Burnham, D.C.

Arg. & Sub. 3/12/73

Rev. & Decree here for appellant.

4/16/73 BO 181

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IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

ALLENBERG COTTON COMPANY
Complainant

Versus NO. 7642

BEN E. PITTMAN
Defendant

[fol. 2] **APPEARANCES**

FOR:
ALLENBERG COTTON COMPANY — Maynard, Fitzgerald and Maynard, Clarksdale, Ms 38614

FOR:
BEN E. PITTMAN — Ellen E. Goldman Marks, Ms 38646

[fol. 3] **IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI**

FEBRUARY TERM 1972

BE IT REMEMBERED that the Chancery Court of Quitman County, Mississippi convened in Regular Session on this the 14th day of February 1972 and being the second Monday of February 1972 at 9 o'clock A.M. pursuant to Law.

The COURT having convened pursuant to law, there being present the HONORABLE PARTEE L. DENTON, Chancellor; L. Q. Brunt, Sheriff; James A. Martin, Clerk of the Chancery Court; Joyce M. Lanham, Court Reporter and the COURT having been opened by due proclamation of the Sheriff the following proceedings were had and conducted, to-wit: * * *

FILED: NOVEMBER 10, 1971
James A. Martin, Chancery Clerk
By: J.A.M. D.C.

[fol. 5] Complainant would show that it is desirous of purchasing said cotton in order to fulfill its obligations.

5) Complainant believes that these defendants may be insolvent and if the cotton is not delivered according to the terms of the contract there exists no remedy for the relief of complainant.

6) That justice demands that the complainant be awarded a bill of discovery in order that the amount of cotton, the location thereof, the grade and value, together with the location of the warehouse receipts thereon may be revealed to the complainant, as the defendant has refused to co-operate with the complainant in providing the required information and honoring said contract of purchase between them. That these are material and relevant matters which are exclusively within the knowledge or within the power or custody of the defendant, and which is not within the reasonable reach of the complainant to obtain without the aid of the discovery as prayed for therein. The determination of the above facts are indispensible to the ends of full and exact justice, and such information must be made available to the complainant and the Court in order that the rights of the parties herein may be obtained.

WHEREFORE, PREMISES CONSIDERED, complainant prays that said defendant be summoned and required to answer this bill on the nineteenth day of November, 1971; and that upon a final hearing thereof the complainant be awarded the following relief to-wit:

A. That defendant be enjoined from selling and delivering his cotton to any other party or firm;

B. That the Court order the defendant to proceed with the same and delivery of his cotton to complainant as provided in the written agreement;

C. That the defendant be ordered to pay for damages sustained by the complainant for the defendants having failed to deliver and sell and required by his legal obligation;

D. That the Complainant be granted a bill of discovery in order that the amount of cotton produced, the class, location, grade, and value of said cotton, together with the location of the warehouse receipts thereon may be revealed to the complainant.

E. That defendant be taxed with all cost herein.

And complainant now prays for general relief.

MAYNARD, FITZGERALD, MAYNARD & BRADLEY

/s/ William R. Bradley
Attorney for Complainant

[fol. 6] (Jurat omitted in printing)

[fol. 7]

SALE AND PURCHASE AGREEMENT

1971-1972

Buyer: Allenberg Cotton Company
104 S. Front Street, P O Box 254
Memphis, Tennessee 38101

Pur. # ABC-6
Agents:

Sale and Purchase Agreement

THIS CONTRACT made and entered into this day by and between BEN E. PITTMAN of MARKS, MISSISSIPPI hereinafter referred to as Producer and Seller, and ALLENBERG COTTON CO. of MEMPHIS, TENN. hereinafter referred to as Buyer:

WITNESSETH:

1. On the terms and conditions and at prices hereinafter stated, the Producer and Seller agrees to sell, and the Buyer agrees to buy, all and only the cotton produced by Producer and Seller during the crop year 1971 on approximately 700 acres situated in QUITMAN COUNTY, MARKS, MISSISSIPPI.
Variety: 1/2 Stoneville 213, 1/2 DPL-16

2. This contract is for the sale and purchase of all cotton produced on the above-described acreage eligible for the 1971 Government loan as determined by USDA official Government class (original USDA official Government Class to be final.)

EXCEPT: BELOW GRADES AND THEY WILL BE AT 15¢ and cotton picked up from the ground by machine or otherwise and stripper cotton; also, any false-paced, water-packed, re-packed, reginned or oily cotton.

Cotton reduced in class on account of grass, or other extraneous matter, shall be AT 100 POINTS OVER GOVERNMENT LOAN, NET WEIGHTS.

All cotton eligible under this contract must be hand or spindle picked and must be ginned on VALLEY GIN CO at MARKS, MISSISSIPPI and delivered to FEDERAL COMPRESS & WHSE CO AT MARKS, MISSISSIPPI by _____ (date of warehouse receipt to govern/) Any changes in these ginning and storage provisions must be agreed to in writing between Producer and Seller's account.

Sale and Purchase Agreement

3. Producer and Seller agrees to practice normal, good farming methods in the production and harvesting of the crop, to defoliate before machine picking and to harvest, gin and store as fast as practicable after maturity.

Buyer has the privilege of controlling within reason the amount of heat and cleaning equipment to be used in ginning the cotton. Producer and Seller agrees further to cooperate in harvesting, handling and ginning the cotton, to avoid overheating, overmachining and poor preparation.

[fol. 8] 4. The price shall be 3.3 to 5.0 MICRONAIRE AT 21.00¢ , 2.0 AND LOWER MICRONAIRE AT 100 POINTS OVER GOVERNMENT LOAN NET WEIGHTS. DECEMBER 1, 1971 CUTOFF DATE. ALL COTTON AFTER DECEMBER 1, 1971 SHALL BE AT 100 POINTS OVER GOVERNMENT LOAN, NET WEIGHT, net compress receiving weights at warehouse location with compress receiving and storage charges deducted to date of invoice. Other terms, Memphis Cotton Exchange rules.

In case of loss prior to the time cotton comes under the insured warehouse receipt cover, losses are to be reported to the Buyer but settlement shall be between the Producer and Seller and his gin or farm insurer, with no further obligation to the Buyer.

5. On cotton covered by this contract, one set of samples is to be sent at Producer's and Seller's expense direct from the Compress to USDA Classing Office for Smith-Doxey class; and one set is to be sent, transportation charges collect, direct from the Compress to ALLENBERG COTTON CO. 104 S. Front St. at Memphis, Tenn.

6. Should the Producer and Seller or the Buyer fail or refuse to comply with this contract, the other party shall promptly take necessary legal action to enforce the contract.

Sale and Purchase Agreement

7. We, the Producer and Seller and the Buyer, have carefully read and fully understand the terms and provisions of the foregoing contract, which represents the entire agreement between the parties, and understand further that there may be no modification of this agreement except in writing.

WITNESS our signatures in triplicate original this the 28 day of January 1971.

Printed BEN E. PITTMAN
Producer and Seller

/s/ Ben E. Pittman

ALLENBERG COTTON CO.
BUYER

/s/ Jerry L. Hill

APPROVED AND ACCEPTED:

ALLENBERG COTTON COMPANY

By /s/ Jerry L. Hill

DATE January 28, 1971

(Copy of Contract)
(exhibit to original petition)

[fol. 9]

SUMMONS-CHANCERY COURT NO 7642
QUITMAN COUNTY

IN CHANCERY COURT

TO THE SHERIFF OF QUITMAN COUNTY IN SAID STATE:

You are hereby commanded to summon Ben E. Pittman, if to be found in your county, to appear before the Chancery

Summons

Court of the County of Quitman in the State of Mississippi, at a vacation term of said court to be held on the nine o'clock A.M. the nineteenth of November, 1971, at the courthouse in the City of Clarksdale, Mississippi, then and there to plead, answer, or demur to the Bill of Complainant of Allenberg Cotton Co. to which he is defendant. And have there and then this writ.

Given under my hand and seal of said Court, and issued this the tenth day of November, A.D., 1971.

/s/ James A. Martin
D.C.

SEAL

[fol. 10]

FILED NOVEMBER 10th, Day, 1971

I have this day executed the within writ on Ben E. Pittman the within named defendant, by leaving a true copy of the same at his usual place of abode in Quitman County, Mississippi, with Patsy H. Pittman, his wife, a member of his family above the age of sixteen years, and willing to receive such copy. The said defendant not found in my County.

This the fifteenth day of November, 1971.

/s/ L. V. HARRISON
SHERIFF

[fol. 11]

IN THE CHANCERY COURT OF QUITMAN COUNTY, STATE OF MISSISSIPPI

FILED NOVEMBER 19, 1971
James A. Martin, Chancery Clerk
By J.A.M. D.C.

(Title omitted in printing)

MOTION FOR BILL OF PARTICULARS

TO THE HONORABLE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI:

Comes now Ben E. Pittman, defendant in the above-styled and numbered cause, and by his attorney, Ellen E. Goldman, respectfully moves the Court for a Bill of Particulars in which the complainant be required to furnish the defendant the following, to-wit:

1.

In Paragraph III of the Bill of Complaint, complainant states that the complainant and defendant entered into a written agreement in Memphis, Tennessee on January 28, 1971. It is necessary for the defense of this lawsuit that the complainant furnish the defendant with some details about the allegations that the subject contract was made in Memphis, Tennessee on January 28, 1971, as nothing on the face of the contracts indicates such and nothing within the knowledge of the defendant indicates that it was. The knowledge is entirely in control of the complainant and material and relevant to adequate defense.

Respectfully submitted,

/s/ Ellen E. Goldman
Attorney for Defendant

[fol. 12] (Jurat omitted in printing)
[fol. 13] (Certificate of service omitted in printing)

[fol. 14]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

DECREE

This cause coming on this day to be heard on motion of complainant for temporary injunction against defendant, Ben E. Pittman, as set forth in bill of complaint of complainant in this cause, and both parties appearing in Court and being represented by counsel, and the Court having considered the same is of the opinion that said temporary injunction should be granted on complainant's entering into bond of $8,500.00 payable according to law;

It is, therefore, hereby adjudged, ordered and decreed that the motion of complainant, Allenberg Cotton Company, in the above styled cause for temporary injunction against defendant, Ben E. Pittman, be and the same is hereby, sustained, and that defendant, Ben E. Pittman, his heirs and assigns, be, and they are hereby, enjoined from selling or delivering the cotton as described in the contract made an exhibit to bill of complaint to any other party other than the complainant until further order of this Court.

It is further hereby adjudged, ordered and decreed that said injunction shall not go into effect until complainant has entered into bond as provided by law, and this decree.

It is further adjudged, ordered and decreed that the defendant, Ben E. Pittman, provide the discovery asked for in the prayer of the complaint, and specifically provide to the complainant information as to the following:

1.) The number of bales produced on the land in question:

2.) Class and grade and value of said cotton:

3.) Location of said bales of cotton and the location of the warehouse receipts and class cards in connection therewith.

ADJUDGED, ORDERED AND DECREED, on this the 19th day of November, 1971.

/s/ Partee L. Denton
Chancellor

[fol. 15] FILED NOVEMBER 23, 1971
James A. Martin, Chancery Clerk
By J.A.M. D.C.

BOND

KNOW ALL MEN BY THESE PRESENTS, that the undersigned Allenberg Cotton Company, a Tennessee corporation, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Ben E. Pittman, of Quitman County, Mississippi, in the sum of Eight Thousand Five Hundred and no/100 ($8,500.00) Dollars, to be paid to the said Ben E. Pittman, his executors, administration or assigns, for the payment well and truly to be made, the undersigned bind themselves, their successors and assigns firmly by these presents.

WHEREAS, on November 19, 1971, the Chancery Clerk Court of Quitman County, Mississippi, granted the undersigned a temporary injunction against Ben E. Pittman in

that certain cause appearing as No. 7642 in the Chancery Court of Quitman County, Mississippi, enjoining him, his heirs and assigns, from selling certain cotton until further order of the Court.

NOW THEREFORE, the condition of this obligation is such that if the above bounden Allenberg Cotton Company, its successors and assigns, or any of them shall pay all damages and cost which may be awarded against Allenberg Cotton Company, or which Ben E. Pittman may suffer or sustain by reason of the suing out of said injunction, in case the same shall be dissolved, then this obligation shall be void; otherwise, to remain in full force.

IN WITNESS WHEREOF, we have hereto set our hands on this the 19th day of November, 1971.

ALLENBERG COTTON COMPANY
BY WILLIAM H. MAYNARD
WM. H. MAYNARD AGENT IN FACT
BY Written power of attorney
PRINCIPAL

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND

/s/ O. Johnson, Jr.
SURETY

[fol. 16] NOVEMBER 19, 1971

Hon. Wm. H. Maynard
Maynard, Fitzgerald, Maynard & Bradley
Attorneys at Law
Clarksdale, Mississippi

Dear Sir:

This is to authorize you for and on behalf of Allenberg Cotton Company to sign our name as principal with you as agent, to an $8,500.00 bond as required by decree of Chancellor Partee L. Denton, on November 19, 1971 in Chancery Cause no 7642, Chancery Court of Coahoma County, Mississippi.

ALLENBERG COTTON COMPANY

BY: /s/ W. D. Crawford
W. D. CRAWFORD, SECRETARY

[fol. 17]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

ANSWER TO AMENDED BILL OF COMPLAINT AND DECREE OF DISCOVERY

A. ANSWER TO BILL OF COMPLAINT AS AMENDED

1. RESPONSE TO AMENDED BILL:

1.

Defendant admits Paragraphs 1 of the Bill of Complaint.

2.

Defendant admits the allegations of Paragraph 11 of the bill of complaint.

3.

Defendant admits that he and complainant signed a written contract in Marks, Mississippi, on January 28, 1971, but denies mention in his presence or on the face of the contract that it had been approved in Memphis, Tennessee, and such approval was necessary for the validity of said agreement, as set out in Paragraph 111 of the Bill of Complaint, as amended.

4.

Defendant in answer to Paragraph IV of the Bill of Complaint admits that harvest of cotton is underway and that he has delivered cotton to the warehouses, but denies that the subject contract binds him to pay any specific date of fulfillment.

5.

Defendant, in response to Paragraph V of the Bill of Complaint, denies that he is insolvent.

11. ANSWER TO DECREE FOR DISCOVERY

1.

In answer to the decree for discovery, item No. 1, the defendant produced 534 bales of cotton on land in question.

2.

The class cards are being gathered and the defendant will turn over to the complainant the ones he has in his possession at 10:00 on November 25th, 1971, in Chancery Court in Clarksdale, Mississippi. The defend-
[fol. 18] ant is not sure what "the value of the cotton" means in Item 11 of the decree. He sold the

cotton on November 9th, 1971, to Delta Cotton Co. in Greenwood, Mississippi, at 28.90 less commission.

3.

Location of the bales requested in Item 111 of decree was Federal Compress in Marks and Sledge, Mississippi, on November 9, 1971.

Location of the warehouse receipts has not been in the knowledge of the defendant since November 9, 1971. He turned the receipts over to Delta Cotton Co., in Greenwood, at that time.

111. AFFIRMATIVE DEFENSES

AND NOW HAVING FULLY ANSWERED the allegations contained in the amended Bill of Complaint and provided the complainant with the decreed discovery, the defendant Ben E. Pittman, by way of affirmative defense against complainant says

1.

Defendant affirmatively states to the Court that the Allenberg Cotton Company of Memphis, Tennessee, a Tennessee corporation, is a foreign corporation doing business in the State of Mississippi and it is not qualified to do business in the State of Mississippi as required by S5309-221 of the Mississippi Code of 1942 Annotated. In this regard the defendant attaches hereto an exact copy of a certificate of non-certification of the Allenberg Cotton Company from the Office of the Secretary of State of Mississippi which is Exhibit "A" hereto and attached and asks that it be made a part hereof as though fully written herein.

11.

Defendant also affirmatively states that the Allenberg Cotton Company, as complainant, filed suit No. 7639 against the defendant in the Chancery Court of Quitman County, Mississippi on November 1, 1971, for the delivery of his cotton under subject contract, a copy of which bill is attached hereto as Exhibit "B" and made part hereof.

On November 5, 1971, defendant made a motion that the suit be dismissed on the grounds that the Complainant was not qualified to do business in the State of Mississippi and could not therefore, use the Courts of Mississippi to enforce its contracts. A copy of the defendant's motion is attached hereto and made a part hereof by references and marked Exhibit "C". The complainant thereafter by its own motion, a copy of [which] is Exhibit "D"
[fol. 19] to this answer, has the Court to dismiss its Bill of Complaint. The order for dismissal is attached hereto and made a part hereof and marked Exhibit "E". The defendant affirmatively states that the complainant's dismissal of its own suit indicates that it was doing business in the State of Mississippi as an unqualified foreign corporation.

WHEREFORE, PREMISES CONSIDERED, defendant having fully answered and provided complainant with discovery demands and moves that the Bill of Complaint as amended be dismissed except for the information, injunctive relief and discovery which have been decreed, with cost to the complainant on the following ground.

1. That complainant is doing business in the State of Mississippi without having qualified to do so according to S5309-221 of the Mississippi Code of 1942 Annotated and

therefore not entitled to use the courts of the State of Mississippi as set out in S5309-221 of the Mississippi Code of 1942 Annotated.

/s/ Ellen E. Goldman
Attorney for Defendant

(Jurat omitted in printing)

[fol. 20] **EXHIBIT "A"**

STATE OF MISSISSIPPI
OFFICE OF
SECRETARY OF STATE
JACKSON

CERTIFICATE

I, Heber Ladner, Secretary of State of the State of Mississippi, and as such legal custodian of the corporate records, required by the laws of Mississippi, to be filed in my office, do hereby certify that I have made a diligent search in my office for the record and copy of the charter of articles of incorporation, or certificate of incorporation, of Allenberg Cotton Company, a corporation, authorized by law for the filing of such charter or articles of incorporation, or certificate, and there cannot be found therein, or on file in my office, any paper or record to the charter or articles of incorporation, or certificate of incorporation, of Allenberg Cotton Company, a corporation, or any record of any fees paid by said corporation for the filing of said charter or articles of incorporation, or certificate.

I further certify that I have made diligent search in my office for the records and papers relating to the appointment, by the aforementioned corporation, of the Secretary of State, or in lieu thereof an agent upon whom service of process may be had in the event of any suit against said corporation, as authorized by the laws of Mississippi, and there cannot be found therein, or on file in my office, any paper relating to the appointment, by the aforementioned corporation of the Secretary of State, or in lieu thereof an agent upon whom service of process may be had.

/s/ Heber Ladner
Secretary of State of the State
Of Mississippi

Witness my hand and seal of office, this the 4th day of November, 1971

SEAL

[fol. 21] **EXHIBIT "B"**

**IN THE CHANCERY COURT OF
QUITMAN COUNTY, MISSISSIPPI**

(Title omitted in printing)

FILED NOVEMBER 1, 1971
James A. Martin, Chancery Clerk
By J.A.M. D.C.

BILL OF COMPLAINT

TO THE HONORABLE CHANCERY COURT OF THE COUNTY AFORESAID:

Exhibit B to Answer

Comes now the complainant, Allenberg Cotton Company, and shows unto the Court the following, to-wit

1) That said Allenberg Cotton Company is a Tennessee corporation authorized to do business in the State of Mississippi, and that the defendant, Ben E. Pittman is an adult resident citizen of Quitman County, Mississippi, whose home address is Marks, Mississippi.

2) The defendant is and has been a farmer engaged in raising cotton in Quitman County, Mississippi, and was so engaged at the time of the execution of a written agreement with complainant, a copy of which is attached hereto and made a part of this petition.

3) The complainant and defendant entered into the written agreement made an Exhibit to this petition on January 28, 1971, wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 700 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in this contract.

Complainant would show that contrary to the terms of the contract, the defendant is now harvesting the cotton crop grown on his acreage as described in the contract, but contrary to the provisions of the agreement has refused and does refuse to deliver the cotton to complainant although complainant has complied with all terms and conditions of the agreement.

Complainant has required of the defendant that the cotton be delivered as provided in the agreement, but has been advised and believes that the defendant producer does not intend to and will not sell nor deliver his cotton to the complainant.

Exhibit B to Complaint

4) Complainant would show that harvest of the cotton is well under way, that the cotton is being delivered to the warehouse for storage and that the time for fulfillment of the agreement has begun and complainant stands ready and willing to purchase said crop as agreed.

[fol. 22]

Complainant would show that it is desirous of purchasing said cotton in order to fulfill its obligations.

WHEREFORE, PREMISES CONSIDERED, complainant prays that said defendant be summoned and required to answer this Bill on the eighth day of November, 1971; and that upon a final hearing thereof the complainant be awarded the following relief, to-wit:

A. That defendant be enjoined from selling and delivering his cotton to any other party or firm;

B. That the Court order the defendant to proceed with the sale and delivery of his cotton to complainant as provided in the written agreement;

C. That the defendant be ordered to pay for damages sustained by the complainant for the defendants having failed to deliver and sell as required by his legal obligations.

D. That defendant be taxed with all cost herein.

And complainant now prays for general relief.

MAYNARD, FITZGERALD, MAYNARD & BRADLEY:

BY /s/ Wm. H. Maynard
ATTORNEYS FOR COMPLAINANT

(Jurat omitted in printing)

[fol. 23] **EXHIBIT "C"**

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

FILED NOVEMBER 5, 1971
James A. Martin, Chancery Clerk
By P.C. D.C.

(Title omitted in printing)

MOTION TO DISMISS

TO THE HONORABLE CHANCERY COURT OF THE COUNTY AFORESAID:

Comes now the defendant, Ben E. Pittman, and moves the Court to dismiss the Bill of Complaint in the above styled and numbered cause for the following cause, to-wit.

The Allenberg Cotton Company of Memphis, Tennessee, is not qualified as a foreign corporation to do business in Mississippi as required by statute, and Section 5309-239 of the Mississippi Code of 1942, Annotated states that a foreign corporation doing business in Mississippi without having qualified as required by statute cannot use the Courts of this State to enforce any cause of action that accrued as a result of doing such business.

A copy of a certificate of non-certification of the Allenberg Cotton Company is attached hereto as Exhibit "A" to this motion and made a part hereof by incorporation by reference.

/s/ Ellen E. Goldman
ELLEN GOLDMAN
ATTORNEY FOR DEFENDANT

[fol. 24] **EXHIBIT "D"**

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

FILED NOVEMBER 8, 1971
James A. Martin, Chancery Clerk
By P.C. D.C.

(Title omitted in printing)

MOTION TO DISMISS WITHOUT PREJUDICE

Comes now the Complainant, Allenberg Cotton Company, in the above styled and numbered cause by and through its attorney Maynard, Fitzgerald, Maynard & Bradley, and moves the Court to dismiss the above cause of action without prejudice, and at its cost.

ALLENBERG COTTON COMPANY
BY
MAYNARD, FITZGERALD, MAYNARD & BRADLEY

BY /s/ O. L. GARMON III

[fol. 25] EXHIBIT "E"

IN THE CHANCERY COURT OF
QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

ORDER OF DISMISSAL WITHOUT PREJUDICE

Complainant having made a motion to dismiss the above cause of action without prejudice, and at its cost, and the Court having considered the matter does hereby dismiss said cause of action without prejudice at the cost of the complainant.

ORDERED, ADJUDGED and DECREED on this the ninth day of November, 1971.

/s/ Partee L. Denton
Chancellor

[fol. 26]

IN THE CHANCERY COURT OF
QUITMAN COUNTY, STATE OF MISSISSIPPI

(Title omitted in printing)

WAIVER OF FORMAL NOTICE OF FILING OF INTERROGATORIES AND FORMAL SERVICE OF COPIES OF INTERROGATORIES

COMES NOW the undersigned attorney of record for complainant, Allenberg Cotton Company, and hereby acknowledges receipt of a true and correct copy of the above and foregoing Interrogatories propounded to said complainant by defendant, and hereby waives formal notice of the filing of said interrogatories and waives formal service of a copy of said interrogatories upon the undersigned as attorney of record for said complainant.

This the 26th day of November, 1971.

/s/ Wm. H. Maynard

FILED NOVEMBER 29th, 1971
James A. Martin, Chancery Clerk
By J.A.M. D.C.

[fol. 27]

ELLEN E. GOLDMAN
Attorney at Law
231 Chestnut Street
Marks, Mississippi 38646
326-8688
P.O. Bx 88

December 6, 1971

FILED
DECEMBER 7, 1971
James A. Martin, Chancery Clerk
By J.A.M. D.C.

Mrs. Edward L. Lanham
427 Elm
Clarksdale, Mississippi

In Re: Allenberg Cotton Co.
7643 H. T. Pittman and also
Allenberg Cotton Co.
7642 Ben E. Pittman

Dear Mrs. Lanham:

You are hereby requested and directed to transcribe your notes and file them with the Clerk of the Court, as provided by law, in the above styled and numbered cause, as H. T. Pittman and Ben E. Pittman desire to prosecute an appeal from a d cree by the Chancellor of the Court of Quitman County, on the 26th day of November, 1971, regarding preliminary hearing on the matter of whether the Allenberg Cotton Company was "doing business in the State of Mississippi."

Yours very truly,

/s/ Ellen E. Goldman
Attorney

(Certificate of service omitted in printing)

cc: Mr. William Maynard
Attorney at law
Steven Building
Clarksdale, Mississippi

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[fol. 33; Tr. p. 1]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Vacation)

(Title omitted in printing)

TRANSCRIPT

This cause came on to be heard in Vacation at 10:00 o'clock A.M. Friday, November 26th, 1971, at the Coahoma County Courthouse in Clarksdale, Mississippi. Present and presiding was the Honorable Partee L. Denton, Chancellor for the Seventh Chancery Court District, Place Two, of Mississippi. The oral testimony and documentary evidence offered during the hearing is contained in this transcript.

[fol. 34; Tr. p. 2]

APPEARANCES:

For the Complainant: Hon. Billy Maynard
Maynard, Fitzgerald, Maynard & Bradley
Attorneys at Law
Clarksdale, Mississippi

Hon. William R. Bradley
Maynard, Fitzgerald, Maynard & Bradley
Attorneys at Law
Clarksdale, Mississippi

For the Defendant: Mrs. Ellen E. Goldman
Attorney at Law
Marks, Mississippi

[fol. 35; Tr. p. 3]

BY THE COURT:

This case was called - process was made returnable and the parties appeared before the court a week ago today on the 19th of November, 1971. No pleadings had been filed and the case was continued to date, on the statement, if I recollect correctly that H. T. Pittman had become ill and had to leave the Court. Now, today, Mr. Pittman, the defendant has filed an answer and set out an affirmative defense and filed interrogatories. I believe that's the status of the pleadings.

BY MRS. GOLDMAN:

The interrogatories have been answered and if it's in order, I would like for you to mark them as being filed.

BY THE COURT:

The clerk is not here and the clerk of this county is not the clerk of Quitman County. Coahoma County is taking today, the Friday after Thanksgiving, as a holiday. I will mark the answers to the interrogatories filed. I want the solicitors to see that it's entered on the docket to show that it was filed by me today.

BY MR. MAYNARD:

We will, today, send it to the chancery clerk of Quitman County, Mississippi, indicating that Your Honor, has marked it filed and that the Clerk of said Chancery Court to likewise mark it filed in his office.

BY THE COURT:

Let the record also show that contemporaneously with the filing, there's been answers to the interrogatories - copies of the answers, served on solicitor for the defendant.

[fol. 36; Tr. p. 4]

BY MR. MAYNARD:

Now, Your Honor, one question of necessity has to be decided before we're into the merits—even with the in-

junction, would be the question that is raised by Mrs. Goldman, that Allenberg Cotton Company, the Complainant in this case, has no legal right to bring this suit in Mississippi. We are prepared to introduce evidence and to argue at this time on this question.

BY THE COURT:

I believe that might be classified as a plea in abatement and if it should develop that a complainant cannot come into this court to seek relief, that would dispose of the case. So I believe we can proceed on that phase of the answer.

BY MR. BRADLEY:

Judge, I believe this should apply to both cases which are now pending before the Court, because the proof will be the same in each case.

BY MRS. GOLDMAN:

Your Honor, I object to that, because the interrogatories are different and the proof in the Ben E. Pittman case will be made by Mr. Ben E. Pittman himself and in the H. T. Pittman case, Mr. H. T. Pittman had no dealings with the agents of Allenberg Cotton Company.

BY THE COURT:

I judge, that what you are referring to there is the issue that you've raised in the H. T. Pittman case, is that H. T. Pittman did not sign the contract, nor did he authorize it to be signed by his son,

[fol. 38; Tr. p. 5]

Ben E. Pittman, nor has he ratified it, and some other things in that connection alleged in the affirmative defense. I believe that goes to the merits and seems to me that the question of whether or not the complainant, Allenberg Cotton Company is a non-resident corporation, not qualified to do business in Mississippi, but yet doing business in Mississippi, is pertinent to both cases and I think on that particular issue, as distinguished from the issue of

whether or not the contract was signed with or without authority, or by whom, should be separated for the purposes of this hearing. I don't want to put anybody to any unnecessary trouble, but I think that if the proof is the same I don't understand why it shouldn't be consolidated and from your statement, I don't understand why the proof wouldn't be the same on the issue of whether or not Allenberg Cotton Company is entitled to resort to this Court for relief.

BY MRS. GOLDMAN:

The proof would not be the same, because in the Ben E. Pittman case, Mr. Ben E. Pittman, Mr. Ben E. Pittman, did what we think, constitutes business with Allenberg Cotton Company, in Marks, Mississippi. He participated in this. He was approached by representatives and agents of the Allenberg Cotton Company and Mr. H. T. Pittman was not. So the two cases are different in proof on this matter.

[fol. 38; Tr. p. 6]

BY THE COURT:

I won't force it, but it looks to me like you are probably taking an unnecessary amount of time to require the proof on this issue to be put on twice. We will proceed on the H. T. Pittman case.

BY MRS. GOLDMAN:

Your Honor, I would like to say that this hearing is for injunctive relief and I feel that before we raise our defense, that the burden is on the complainant to show that he is entitled to injunctive relief on the basis that he has complained it in this bill of complaint. He claims that Mr. Pittman is insolvent and it is on this basis that he has brought us into Court this morning and I feel that we should first of all show that he has raised a proper issue for a

hearing of any sort.

BY MR. MAYNARD:

If the Court please, with reference to your plea, Mrs. Goldman, with reference to Mr. Ben Pittman not being an agent is an affirmative plea, so I think that in order to proceed according to both law and equity, the burden is on you. We've alleged that it's a legal contract and that he did not deliver. But the first thing, Your Honor, is the question of whether we've got a right to sue.

BY THE COURT:

I think we'll proceed on the proposition of whether or not this part of the affirmative defense that I consider to be, if not a plea in abatement, similar to a plea in abatement, that is, the authority to sue in this court. I understand that you are making an oral motion to be set out and now

[fol. 39; Tr. p. 7]

be heard on that issue.

BY MRS. GOLDMAN:

I objected to the hearing at this time because there has been no proof entitling the complainant to injunctive relief.

BY MR. MAYNARD:

In order to clarify the record, Your Honor, Complainant will now move that the issue of whether or not the complainant has the right to sue under the laws of Mississippi on the alleged ground that it is doing business in Mississippi without having so qualified, be heard preliminary and first, before any of the issues on the merits of the case.

BY THE COURT:

I believe that would dispose of the case, if decided in favor of the defendant. I think it should be heard first. There are several other grounds alleged in the bill of complaint for equitable jurisdiction for immediate relief

other than the one you mentioned in your statement a moment ago.

BY MRS. GOLDMAN:

Your Honor, first of all, I would like to introduce this certified copy of the Articles of Incorporation of Allenberg Cotton Company and I would like for it to be admitted as evidence, since it is a certified copy. It sets out the purposes of Allenberg Cotton Company in incorporating in the State of Tennessee.

BY MR. MAYNARD:

We have no objection.

[fol. 40; Tr. p. 8]

BY THE COURT:

Hand it to the stenographer and let it be marked for identification and admitted as an exhibit.

(SAME IS MARKED AS EXHIBIT 1 FOR THE DEFENDANT, and is attached hereto and made a part of this record as follows, to-wit:)

[fol. 41] STATE OF TENNESSEE
Dept. of State

FILED
MAY 1, 1972
James A. Martin Chan Clk
By J. D.C.

EXHIBIT # 1
By Agreement
For Defendant
11-26-71

I, JOE C. CARR, Secretary of the State of Tennessee, do hereby certify that the annexed is a true and correct copy of the certificate of Incorporation of

ALLENBERG COTTON COMPANY, INC.

which was recorded in this office on March 14, 1946 in Corporation Record Book Misc. A-4, page 68 and the amendments thereto, as follows:
January 4, 1955 P-40, page 65 Increasing the capital stock;
March 27, 1962 P-48, page 2145 Increasing the capital stock.

In Witness Whereof, I have hereto affixed my signature and the Great Seal of the State, at Nashville, this 16th day of November in the year of our Lord nineteen hundred seventy one.

/s/ Joe C. Carr
JOE C. CARR, SECRETARY
OF STATE

SEAL

[fol. 42] STATE OF TENNESSEE
CERTIFICATE OF INCORPORATION

NAME First. The name of this corporation is:
ALLENBERG COTTON COMPANY, INC.

ADDRESS Second. The address of the principal office of this corporation in the State of Tennessee shall be 104 S. Front Street, Memphis, Tennessee, or such other place in Shelby County or any other county in Tennessee as may be from time to time be designated by the Board of Directors

BUSINESS Third. The nature of the Corporation, or subject or purposes proposed to be transacted, promoted or carried on by it are:

Section A: To carry on the business of cotton merchants including the buying and selling of spot cotton, the dealing in cotton futures, the storing, warehousing, insuring, and

hedging of the cotton and cotton sales or purchases; the borrowing or lending of money, unsecured, or secured by cottor warehouse receipts or otherwise, and in general, any other business that may be allied therewith, or ancillary thereto, or useful in the advancement of the general purposes of the business of cotton merchants, and any other business that can be conducted along with said business, or that might advance the purposes, including the right to deal in any commodity by the actual sale or purchase of same by private negotiations or on any organized market, and also including the purchases or sales of future contracts or hedges for any such other commodity.

SECTION B: To manufacture, produce, repair, buy, sell, export, import and generally deal in at retail or wholesale as owners, jobbers, factors or consignees, or in any other capacity, or, all merchandise of every kind and character.

SECTION C: To have and to excercise all the powers now or hereafter conferred by the laws of the State of Tennessee upon corporation organized under the laws under which the Corporation is organized and any and all Acts amendatory thereof and supplemental thereto; but this corporation shall not by any implication or construction be deemed to possess the power to issuing bills, notes, or other evidences of debt for circulation as money, or the power of carrying on the business of receiving deposits of money, or the business of buying gold and silver bullion or foreign coins.

[fol. 43] SECTION D: To conduct business in the State of Tennessee, other states, the District of Columbia, the territories and colonies of the United States and in foreign countries, and to have one or more offices out of the State of Tennessee, as well as within the said State. In any state or country or political division thereof

in which the corporation may have qualified to do business, it shall have all the objects and powers herein set forth, but only to such an extent as may be permitted by the laws of such state or country or political division thereof to any business or commercial corporation.

SECTION E: To do all and everything necessary and proper for the accomplishment of the objects enumerated in this Articles of Incorporation, or any amendment thereof, or necessary or incidental to the protection and benefit of this corporation and in general to carry on any lawful business necessary or incidental to the attainment of the subjects of this corporation whether or not such business is similar in nature to the subject set forth in these Articles of Incorporation or any amendment thereof.

The foregoing clauses shall be construed both as subject and powers; and it is hereby expressly provided that the foregoing enumeration of specific objects or powers shall not be held to limit or restriction in any manner either the objects or powers of the Corporation, and that the Corporation shall possess such incidental powers as are reasonably necessary or convenient for the accomplishment of any of the subjects or powers hereinafter enumerated, either alone or in association with anut [sic] government, state, municipality, corporation, association, partnership, peson [sic] organization or entity whatsoever, at least to the extent and as fully individuals might or could do as principals, agents, contractors or otherwise.

STOCK, WITH CLASSIFICATION AND DISTINGUISHING CHARACTERISTICS IF ANY.

FOURTH The total number of shares of all classes of stock which this corporation shall be authorized to issue is Twenty Thousand (20,000) shares, without nominal,

stated or par value. Each share of said stock shall have one vote.

INITIAL CAPITAL: The amount of capital with which this corporation will begin business shall be One Thousand Dollars ($1,000.00); and when such amount so fixed shall have been subscribed for, all subscriptions of the stock of this corporation shall be enforcible and it may proceed to do business in the same manner and as fully
[fol. 44] as though the maximum number of as shares authorized under the provisions of the preceding section hereof shall have been subscribed for.

DURATION: Sixth The corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders shall not be subject to the payment of corporation debts to any extent whatsoever.

EIGHT: The number of directors of the Corporation shall be fixed by the by-laws and may be increased from time to time in the manner specified therein, provided, however, that the number of directors shall not be less than three. Election of directors need not be by ballot. No director of the Corporation need by a stockholder. Any director may be removed at any time, either for or without cause, so long as the stockholders are entitled to vote in respect to the corporate affairs and management of the corporation, by the affirmative vote of stockholders holding of record a majority of the outstanding shares of the stock of the Corporation which were to vote at the election of such director, given at a special meeting of such stockholders called for that purpose.

NINTH: In furtherance, not in limitation, of the powers conferred upon the Board of Directors by statute, the Board

of Directors is expressly authorized, without any vote or other action by stockholders other than such as at the time shall be expressly required by statute or by provisions of this certificate of Incorporation (and amendments thereof if any) or by the by-laws, to exercise all of the powers, rights and privileges of the Corporation (whether expressed or implied in this Certificate of Incorporation or conferred by Statute) and do all acts and things which may be done by the Corporation including, but without limiting the generally of the foregoing the right:

SECTION A By resolution or resolutions passed by the majority vote of all the members of the Board of Directors as from time to time they constituted to make, adopt, alter, amend and repeal from time to time the by-laws of the Corporation, provided, however, that the holders of the majority of the issued and outstanding stock may alter, amend, or repeal the by-laws made by the Board of Directors and may from time to time limit or define the right of the Board of Directors to alter, amend or repeal any by-law or by-laws made or adopted; and

[fol. 45] SECTION B By resolution or resolutions passed by the affirmative vote of a majority of the number of Directors as from time to time fixed by the by-laws of the Corporation, to designate one or more committees, each committee to consist of two of the directors of the Corporation, and each such committee to the extent provided in said resolution or resolutions or in the by-laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, such committee or committees to have such name or names as may be stated in the by-laws of the Corporation, or as may be determined from time to time by resolution or resolutions adopted by the Board of Directors; and

SECTION C: By resolution or resolutions by the affirmative vote of a majority of the number of Directors as from time to time fixed by the by-laws of the Corporation, to sell, assign, transfer, convey, or dispose of, or to mortgage or otherwise encumber any real estate or lease of real estate to which or in which the Corporation shall at any time have any right or interest, and, pursuant to such resolution or resolutions, to acquire any right or interest to or in any real estate or lease of real estate; and

SECTION D: By resolution or resolutions, passed by the affirmative vote of a majority of the number of Directors as from time to time fixed by the by-laws of the Corporation, to authorize or approve the purpose by or on behalf of the Corporation of its capital stock, bonds, debentures, warrants, rights, scrip or other obligations of securities of any nature howsoever natured either pro rata from all holders or from time to time in the open market or at private sale, and

SECTION E: By resolution or resolutions passed by the affirmative vote of a majority of the number of Directors as from time to time fixed by the by-laws of the corporation; to sell, lease or exchange any and all of the property and assets of this Corporation, including its good will and its corporation franchises, upon terms and conditions as the Board of Directors may deem expedient and for the best interests of the Corporation when and as authorized by the affirmative vote of the holders of record of at least a majority of the issued and outstanding stock, or when authorized by the written consent of the holders of record of at least a majority of the stock holders issued and outstanding.

[fol. 45a] TENTH: The stockholders and the Board of Directors shall have power, if the by-laws so

provide, to hold their meetings within or without the State of Tennessee, and the books of the Corporation (so far as not prohibited by the laws of said State) may be kept outside of the State of Tennessee at which place or places as from time to time may be designated by the Board of Directors.

ELEVENTH: Subject to the limitations provided for by the General Corporation Law of the State of Tennessee, as from time to time amended, the Corporation reserves the right to amend, alter, change, or repeal any provisions contained in this Certificate or Incorporation, in the manner now or hereafter prescribed by statute, and all rights herein conferred upon stockholders are granted subject to such reservations.

We the undersigned apply to the State of Tennessee, by virtue of the laws of the land, for a Charter of Incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands this the 13th day of March 1946.

/s/ Eric D. Hirsch
/s/ W. H. Moffatt
/s/ F. O. Oakes

SUBSCRIBING WITNESS:
/s/ Wm. M. Goodman

STATE OF TENNESSEE,
COUNTY OF SHELBY

Personally appeared before me, the undersigned, a Notary Public in and for the State and County, at Memphis, duly commissioned, qualified and acting, the within named incorporators Eric D. Hirsch, Williard H. Moffatt, and

Frank O. Oakes, with whom I am personally acquainted, and who acknowledged that they executed the within application for a Charter of Incorporation for the purposes therein contained and expressed.

Witness my hand and Notarial seal this the 13th day of March, 1946.

/s/ William W. Goodman
Notary Public

S E A L
My commission expires:
April 4, 1948

[fol. 45b] I JOE C. CARR, Secretary of State, do certify that this Charter, with certificate attached, the foregoing of which is a true copy, was this day registered and certified to by me.

This the 14th day of March, 1946.

/s/ JOE C. CARR
Secretary of State

FEE $110.00

[fol. 45c]

STATE OF TENNESSEE
AMENDMENT TO CHARTER OF INCORPORATION

We, Eric D. Hirsch and W. D. Crawford, the President and Secretary, respectively, of Allenberg Cotton Company, Inc., a corporation chartered and organized under the laws of the State of Tennessee, in pursuance to directions from the Directors of the Corporation, hereby certify that at a meeting of the stockholders of said corporation, legally called and held at the offices of said corporation in the City of Memphis, Tennessee, on

December 29, 1954, a resolution in writing was adopted by the stockholders, declaring the desire of the stockholders to amend the charter of their company by eliminating the present paragraph Fourth, and substituting the following therefor:

"Fourth. The total number of shares of all classes of stock which this corporation shall be authorized to issue is as follows:

"A. Twenty Thousand (20,000) shares of common stock, without nominal, stated or par value. Each share of said common stock shall have one vote.

"B. Two Thousand (2,000) shares of $100 par value 5% cumulative preferred stock, preferred on liquidation at par value and accumulated unpaid dividends, without any voting rights at any time, callable in whole or in part by lot or by any other method of selection chosen by this corporation, after thirty (30) days written notice, at par plus accumulated and unpaid dividends, and convertible, in whole or in part, at the option of the respective holders of such stock, at any time on or after January 1, 1957, upon at least sixty (60) days notice to the corporation, into 10 year 5% debentures of the corporation, subordinate to all mortgage, bank and trade creditor indebtedness, such conversion privilege to be at all the call price of par plus accumulated and unpaid dividends on the converted stock."; and that said resolution was duly entered on the minutes of said corporation.

NOW, THEREFORE, we hereby certify to the fact of the adoption of said resolution by the stockholders of the said corporation for the purposes above set out, to the end that this certificate may be duly recorded in the office of the Secretary of State.

[fol. 45d] WITNESS our hand this the 29 day of Dec 1954.

Eric D. Hirsch
Eric D. Hirsch, President

W. D. Crawford
W. D. Crawford, Secretary

STATE OF TENNESSEE,
COUNTY OF SHELBY

Personally appeared before me, a Notary Public of the State and County aforesaid, Eric D. Hirsch, and W. D. Crawford, with whom I am personally acquainted, and who made oath before me in due form of law that Eric D. Hirsch is the President and W. D. Crawford is the Secretary of Allenberg Cotton Company, Inc., and that the statements made in the foregoing certificate are true.

WITNESS my hand and official seal at office in Memphis, Tennessee, this 29 day of Dec 1954.

Nancy Clinton
Notary Public

S E A L

My commission expires:
September 4, 1956

I, G. EDWARD FRIAR, Secretary of State, do hereby certify that this amendment to charter, with certificate attached, the foregoing of which is a true copy, was this day registered and certified to by me. This the 4th day of January 1955.

G. EDWARD FRIAR
SECRETARY OF STATE

FEE: $30.00

[fol. 45e] AMENDMENT TO CERTIFICATE OF INCORPORATION

We, Eric D. Hirsch and W. D. Crawford, the President and Secretary, respectively, of Allenberg Cotton Company, Inc., a corporation chartered and organized under the laws of the State of Tennessee, in pursuance to directions from the Directors of the Corporation, hereby certify that at a meeting of the stockholders of said corporation, regularly called and held at the offices of said corporation in the City of Memphis, on March 30, 1962, a resolution in writing was adopted by an affirmative vote of the stockholders, said affirmative vote representing all of the shares of stock in said corporation, declaring the desire of the stockholders to amend the charter of their said company for the purpose set out below, and that said resolution is as follows:

RESOLVED, that the certificate of incorporation be changed by deleting Article Fourth thereof in its entirety and substitution of the following therefor:

"STOCK, WITH CLASSIFICATIONS AND DISTINGUISHING CHARACTERISTICS, IF ANY. Fourth. The total number of shares of all classes of stock which this corporation shall be authorized to issue is Eighty Thousand (80,000) shares, without nominal, stated or par value. Each share of said stock shall have one vote."

NOW, THEREFORE, we hereby certify to the fact of the adoption of said resolution by the stockholders of said corporation for the purposes above set out, to the end that this certificate may be duly recorded in the office of the Secretary of State.

WITNESS our hands this the 23rd day of March 1962.

/s/ Eric D. Hirsch
President

/s/ W. D. Crawford
Secretary

STATE OF TENNESSEE,
COUNTY OF SHELBY

Personally appeared before me, a Notary Public of the County aforesaid Eric D. Hirsch and W. D. Crawford, with whom I am personally acquainted and who made oath before me in due form of law that Eric D. Hirsch is the President and W. D. Crawford is the Secretary of Allenberg Cotton Company Inc., and that the statements made in the foregoing certificate are true.

[fol. 45f] WITNESS my hand and official seal at office in Memphis, Tennessee, this 23 day of March 1962.

/s/ Nancy Clinton
Notary Public

S E A L

My commission expires: Aug 25, 1964

[fol. 46; Tr. p. 10]

BY MRS. GOLDMAN:

I would now like to request that the certificate of non-certification of Allenberg be entered into evidence.

BY THE COURT:

Describe that a little better, please ma'am.

BY MR. MAYNARD:

We have no objection.

BY MRS. GOLDMAN:

It is a certificate of non-certification of the Allenberg Cotton Company to do business in the State of Mississippi.

BY THE COURT:

By whom?

BY MRS. GOLDMAN:

By the secretary of state of the State of Mississippi. Dated the fourth day of November, 1971.

BY THE COURT:

Let it be received, marked and entered as an exhibit.

(Same is marked as Defendant's Exhibit 2, and is attached hereto and made a part of this record as follows, to-wit:)

[fol. 47] EXHIBIT #2

STATE OF MISSISSIPPI

11-26-71 jml OFFICE OF
SECRETARY OF STATE
JACKSON

FILED
May 1, 1972
JAMES A MARTIN, CLERK

CERTIFICATE

I, Heber Ladner, Secretary of State of the State of Mississippi, and as such the legal custodian of the corporate records, required by the laws of Mississippi, to be filed in my office, do hereby certify that I have made diligent search in my office for the record and copy of the charter or articles of incorporation, or certificate of incorporation, of

ALLENBERG COTTON COMPANY

a corporation, and the record of the payment of fees by said corporation, authorized by law, for the filing of such charter of incorporation, or certificate, and there cannot be found therein, or on file in my office, any paper or

record relating to the charter or articles of incorporation, or certificate of incorporation, of

ALLENBERG COTTON COMPANY

a corporation, or any record of any fees paid by said corporation for the filing of said charter or articles of incorporation, or certificate.

I further certify that I have made diligent search in my office for the records and papers relating to the appointment, by the aforementioned corporation, of the Secretary of State, or in lieu thereof an agent upon whom service of process may be had in the event of any suit against said corporation, as authorized by the laws of Mississippi, and there cannot be found therein, or on file in my office, any paper relating to the appointment, by the aforementioned corporation, of the Secretary of State, or in lieu thereof an agent upon whom service of process may be had.

Witness my hand and seal of office, this the 4th day of November 1971.

/s/ Heber Ladner
Secretary of State of the
State of Mississippi

(S E A L)

C-50

[fol. 48; Tr. p. 12]

BY MR. MAYNARD:

For further identification, we will again agree to let it be introduced into the record.

BY MRS. GOLDMAN:

I would now like to call Mr. Covington to the stand.

MR. HAYWARD COVINGTON:

after first being duly sworn, upon oral examination, testified as follows, to-wit:

DIRECT EXAMINATION

BY MRS. GOLDMAN:

Q Would you state your name for the Court please?

A Hayward Covington.

Q What is your occupation?

A I run a cotton business.

Q Where do you pursue this occupation?

A In Marks. There at the compress.

Q In Quitman County, Mississippi?

A Yes.

Q Do you book cotton or solicit contract cotton for the Allenberg Cotton Company in Tennessee?

A I don't know as I solicit it. I contract it.

Q Do you approach farmers about contracting their cotton? With Allenberg?

A Right.

Q How long have you done this?

A I would say two years. Two seasons.

Q You have not solicited any cotton any earlier than 1970?

A Yes, I've solicited cotton earlier—not for them.

[fol. 49; Tr. p. 13]

Q Who approached you about soliciting cotton for Allenberg Cotton Company?

A Mr. Jerry Hill.

Q What other cotton companies do you solicit cotton for at this time?

A Cannon Mills.

Q Contract cotton. You handle Cannon Mills contract—

A Yes.

Q Any other?

A Well, Cook and Company—I would say, not mills, but shippers.

Q Do you handle any other contracts for the purchase of cotton?

A I don't understand what you mean.

Q You said you handled for Cannon Mills, and I didn't understand who else.

A It was for shippers, like Cook and Company—in other words, they wouldn't be a direct mill. I don't think Allenberg is a milling outfit. They are probably shippers, I don't know.

Q Do you approach the farmers?

A That's right.

Q Does Allenberg pay you for this activity?

A I draw a draft on them. I pay the farmer for his cotton, in this connection. It was the same way with Cannon Mills. I pay the farmer and draw a draft on them, plus a commission.

BY THE COURT:

For the information of the Court, I wish you would be more specific. As I understand, Mr. Covington, you are in the business of buying cotton from farmers?

A Right.

[fol. 50; Tr. p. 14]

COURT:

And in the business of soliciting farmers to sell their cotton to or through you?

A Right.

BY THE COURT:

Q Now, for the purposes of this hearing, would you distinguish between ordinary sales of actual cotton and between contracts prior to harvesting time for the sale

by the farmer of all of his crops or a large portion of his crops?

A In buying cotton, you just buy direct from the farmer—

BY THE COURT:

Q Would you distinguish between a contract for future delivery and one for immediate delivery—actual delivery of the cotton at the time the sale was made, or one for future delivery?

A I don't know whether I understand that question or not. Contract cotton is usually contracted before the season ends or before the actual sale begins. The contract is at a stipulated price. They have a time cut off and that's it. Buying cotton, you buy as the season goes along from anybody at any time.

BY THE COURT:

Q If I understand you, you are distinguishing really between sales that are made where the cotton is actually delivered at the time of the purchase and between cotton yet to be produced or in the fields unharvested to be delivered in the future?

A I still don't understand that part of it. Contract cotton, is that what you want me to try to answer?

[fol. 51; Tr. p. 15]

BY THE COURT:

Q What do you call contract cotton?

A It's when two parties have agreed to deliver their cotton at a price, the farmer and whoever he contracts with, at a stipulated price. Then that company or mill designates certain micronaire, certain grades—

BY THE COURT:

Q Never mind the details of the contract. If I understand you, what you're calling a contract is to deliver cotton sometime in the future?

A Right.

BY MRS. GOLDMAN:

Q How many contracts did you have farmers sign for delivery of cotton to Allenberg in 1971?

A I wouldn't be specific about that, but I would say in the neighborhood of 25—about 9,000 acres on different contracts. Probably 20 or 25 contracts.

Q How many contracts did you get signed for future delivery of cotton by farmers to Cannon Mills?

A That was 1967.

Q My question was 1971?

A That's what I answered just then was for 1971 and then you're asking me about Cannon Mills. I did contract cotton in 1967 for Cannon Mills.

Q Did you not contract cotton for Cannon Mills at this time?

A I didn't.

Q For 1971?

A They weren't contracting for 1971.

[fol. 52; Tr. p. 16]

Q Would you name the people other than Allenberg Cotton Company for whom you contracted cotton in 1971?

A None.

Q How long have you operated exclusively with Allenberg Cotton Company on contracting cotton?

BY MR. BRADLEY:

Objection. That's leading, Your Honor.

BY THE COURT:

It is leading. Go ahead.

A Last two years.

Q How much does Allenberg pay you to contract cotton for them?

A I get a commission. So much out of a bale.

Q Is that a set commission?

A Not necessarily. Usually, it's from a dollar to a dollar and a quarter per bale.

Q What causes the variation?

A Well, I don't know—a lot of people handle cotton for a different price. Maybe 50¢ a bale, maybe a dollar —maybe a $1.25.

Q Sometimes they pay you a dollar and sometimes they pay you $1.25?

A No, on this particular contract cotton I made it is stipulated at $1.25 a bale, on the cotton that I'm supposed to handle.

Q Do you have a contract with Allenberg Cotton Company?

A No.

Q Do you keep a record of all the cotton you book for Allenberg Cotton Company?

A Only a sales record.

[fol. 53; Tr. p. 17]

Q You don't keep a record of whether the farmers delivered to you or not?

A I've got a record. I know what they're delivering —when they bring cotton in—I've got his name. I've got his contract. I pay him for this cotton and then I immediately in turn draw on Allenberg, plus a commission. Sometimes I charge it to the farmer, however that the contract reads. In some instances the farmer pays my commission. Other instances, Allenberg pays me.

Q You say you draw a draft on Allenberg—

A Yes.

Q You do that in your office?

A Right.

Q On what bank?

A Union Planters National. I wouldn't be positive. I've got a secretary that handles all that. But I think that's

who it is.

Q Do you keep Allenberg Cotton Company contract forms in your office?

A I do.

Q For how long have you been keeping these contract forms in your office?

A Well, I've only been in business with them in this way during the last few years. Last year and this year —'70 and '71.

Q Had you or had your secretary typed individual information about a farmer on these forms?

A Not that I know of, no.

Q What is your procedure for getting the information on these farmers that's necessary for these contracts?

[fol. 54; Tr. p. 18]

A I give them the information—the farmer's name, who's interested in a contract—

Q How do you know that they're interested?

A I talk to the farmers.

Q You approach the farmers?

A I could do it. He would probably approach me to see what I could offer.

Q But on most of your contracts did you approach the farmer or did he approach you?

A That's the usual—

Q You approach the farmer?

A That's right.

Q Do you get information from the farmer about his acreage?

A I do.

Q What do you do with that information?

A I give it to Allenberg.

Q Do you give it to them each time you approach a farmer, or do you send in reports to them?

A No, when they make out a contract they've got the information of how many acres, the kind of seed that he plants, what gin he will probably use. That's usually the three things that they're interested in.

Q Do you send this information in to them on each farmer separately or do you send in a report to them?

A I don't send in anything.

Q How do they get this information from you?

A Over the telephone.

Q When you call them do you tell them an individual farmer's acreage or do you tell them of a group of farmers?

[fol. 55; Tr. p. 19]

A No, I give them individual farmers.

Q Each time you approach a farmer you call Allengerg?

A Right.

Q And you give them the information about the farmer that goes into a contract?

A Right.

Q At this time do you know whether the farmer is going to sign the contract or not?

A No. We had some occasions where they didn't or wouldn't. I don't know which, after the contracts were drawn up.

Q Why do you keep the contract forms in your office?

A Well, the usual thing—there's three. When they send them in there's 3 copies. The farmer keeps one, I keep one and one is mailed back to Allenberg.

Q But the empty forms—do you ever keep the empty contract forms before the information is put on it?

A No.

Q You have none of those forms in your office?

A No, I don't fill those out.

Q Have you ever adjusted a form or made a change

on it after it was sent to you from Allenberg?

A No, I don't make any changes at all.

Q No information has ever been added to a contract in your office?

A No.

Q You state that after the farmer signs the contract, you keep one of them?

A Right.

Q Do the farmers on contracts which stipulate delivery to Allenberg in Memphis, of the receipts and class cards, ever bring their receipts and class cards to you?

[fol. 56; Tr. p. 20]

A How's that?

Q Do you ever receive warehouse receipts and class cards on contracted cotton for Allenberg at your office?

A Yes.

Q And issue payments?

A Right.

Q Although the contract reads that it should be sent to Memphis?

A I don't know as the contract reads it has to be sent to Memphis.

Q If a contract read that would you still receive—

A I think I would. However, let me tell you this. I have sent receipts and class cards direct to them. Cotton that they didn't want payment probably until the first of the year. That cotton would be handled up there.

Q Do you make a contact with the representative from Allenberg and set a time for him to come down to your office to sign up these contracts?

A No, I don't set up any time. He's been there on maybe two or three occasions.

BY THE COURT:

Who is "he"?

A Jerry Hill. He brought Mr. Pittman's and Ben E. Pittman's contract down. As well as I remember he brought J. G. Harris' contract and B. B. Pennington's and Harold McChresten's contract down from Memphis. I think that was all he brought down. He might have brought some colored people's contracts up around Sledge, but they didn't sign the contracts and they just cancelled. Jerry Bland, six or seven of them.

[fol. 57; Tr. p. 21]

Q Did he bring any other contracts down?

A Not that I know of. They would be mailed to me. I in return would call the farmer and tell him that I had his contract. He would come in and sign three. He got one, I got one and I mailed one to Allenberg.

BY THE COURT:

You mean signed three copies of the contract? You don't mean three contracts, you mean three copies at one time?

A Yes, sir, two copies of one contract.

Q So on the contract which Jerry Hill does not sign, you have the farmer come directly to your office and you approve the contract?

A Jerry Hill's name appears on these contracts. He had signed these contracts.

Q Prior to the mailing of these contracts?

A Evidently, yes. His name would be on them, so when the farmer signed it everything was in order.

Q Did—when Jerry Hill came to your office to sign a contract, did you notify the farmers that he was going to be there?

A Yes m'am, I think I did. I notified them either before or right at the time he was there. In other words, the usual thing, I would probably know whether he was coming down or not and I would notify the farmers that he

was coming.

Q Why do you use a different procedure on some of your contracts? Some are signed with Mr. Jerry Hill there and some signed in Memphis before they are mailed out?

[fol. 58; Tr. p. 22]

BY MR. BRADLEY:

Objection. That's an improper question.

BY THE COURT:

Sustain the objection.

Q So you would say you use a different procedure for signing—

BY MR. BRADLEY:

Objection.

Q Do you use a different procedure for signing contracts with Allenberg?

A No.

Q With regard to the representative from Allenberg?

A No.

Q You use the same procedure for all contracts?

A It just so happened that Mr. Hill was down here, as I told you about, and the other times he just mailed them. I don't think it was necessary for him to make a trip down here for it. I could tend to it. I reckon I was supposed to do something.

Q Has Allenberg ever rejected any of your contracts?

A No M'am.

Q Have you ever attended any functions of the Allenberg Cotton Company?

A No M'am. I've never been in the office.

Q Have you ever had any contact with any other member of the Allenberg Cotton Company besides Mr. Jerry Hill?

A No, I haven't.

Q Do you always talk to Mr. Jerry Hill when you call the Allenberg Cotton Company?

A Yes.

Q You talk directly to his office?

[fol. 59 Tr. p. 23]

A He does all the cotton buying for Allenberg, but he's got charge of the buying in this territory.

Q And you have never dealt with anyone else within the company except Mr. Hill?

A That's right. There was one time that I did deal with Mr. Bayer on a contract with Joe Benson. Jerry was in Texas and there was a contract mailed to Joe Benson. I only talked to Mr. Bayer and I understand he's the president.

Q Is the cotton that is contracted for Allenberg stored in the federal compress in Marks, Mississippi?

A Not all of it. Some's in the North Delta. Most of it's in the Marks Compress.

Q All of it is stored in Mississippi, to your knowledge?

A Yes. I don't know of anything out of the State.

Q When do you turn the receipts you receive from farmers over to Allenberg Cotton Company?

A As soon as I can bill it out. Draw a draft for it.

Q No further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

Q The cotton which you purchase is purchased for the purpose of shipping in interstate commerce is it not?

A I don't know what you mean.

Q Is it bought by Allenberg for shipment to mills in foreign states? That's my point.

BY MRS. GOLDMAN:

I object.

A Well, I don't know that.

[fol. 60; Tr. p. 24]

Q You buy cotton for Allenberg, but you also buy cotton for yourself, do you not?

A Right.

Q How long have you been so engaged in buying cotton for yourself?

A 30 years or longer.

Q Now, with reference to the cotton you say is stored in North Delta, it is stored there until it is shipped?

A Right.

Q And where is it shipped?

BY MRS. GOLDMAN:

I object to that, Your Honor.

BY THE COURT:

Overruled. Answer the question, if you know.

A Well, it's shipped to foreign countries, different mills. Wherever they want to sell it. Lot of it in Marks went to Japan.

Q With reference to the warehouse receipts—you send those to Union Planters Bank in Memphis, Tenn. do you not?

A In a draft, yes, sir.

Q And also you send the class cards and other pertinent information along with that?

A Right.

Q The warehouse receipts are a part of that package you send to them along with your draft. That right?

A Yes, sir. Receipts and class cards and the billing.

Q Do the contracts that you submit to Allenberg have to be approved in Memphis?

[fol. 61; Tr. p. 25]

A Yeah, they have to be approved. I don't approve anything. I have no authority whatsoever.

Q Is that correct, that they are approved in Memphis?

A Yes, I'm sure it is.

Q That's all we have, Your Honor.

RE-DIRECT EXAMINATION

BY MRS. GOLDMAN:

Q You mentioned that you buy cotton for yourself. Do you ever contract cotton?

A Not for myself, no.

Q Do you contract cotton for future delivery from a farmer with anyone but Allenberg Cotton Company?

A I did for Cannon Mills in '67, but they haven't contracted cotton for the last two years.

Q Do you ever report farmers for non delivery of cotton under a contract?

A No, not necessarily. Unless I know that this farmer is going to deliver or is not going to deliver or if he's late about delivering cotton. I know if he's got cotton to deliver and hasn't delivered it. Then I might notify them.

Q Would you say you police the contracts for Allenberg Cotton Company?

BY MR. MAYNARD:

We object to that, Your Honor. That's a non-descript word.

BY THE COURT:

I think that is pretty strong language.

A No, I don't police them.

Q Do you contact the farmer if he does not deliver cotton under a contract?

[fol. 62; Tr. p. 26]

A I haven't been accustomed to doing that.

Q You do not contact the farmer?

A No, I haven't.

Q But I believe you said you contacted Allenberg or notified them?

A Well, now there's some colored people over at Swan Lake that's got a contract with Allenberg and I know that they've got cotton out and I notified Allenberg, but I suggested that they call them. I believe Mr. Hill did call.... I do if I know they're way off.

Q Do you contract cotton for Allenberg in any other place except Marks, Mississippi?

A No, I haven't tried to contract any except in Quitman County.

Q You say that—did I understand you to say that Allenberg approves the contracts?

A Yes, they make the contracts out. I have nothing to do with it.

Q When you get a contract into your office, three copies of it, and the farmer comes in and signs it and the representative from Allenberg Cotton Company has already signed, Mr. Jerry Hill—

A Yes.

Q And do you consider this contract—

BY MR. BRADLEY:

Objection.

Q Does this contract take effect—

BY MR. BRADLEY:

Objection.

BY THE COURT:

Let the contract speak for itself if the contract's involved.

[fol. 63; Tr. p. 27]

Q Has Allenberg ever been notified by you that contracts were being signed in your office at a specific time?

A No, that's not necessary.

Q Has any contract signed in your office ever been rejected by Allenberg?

A No'm.

Q Have you ever called Allenberg Cotton Company while the farmer was present in your office and asked them to approve a contract?

A No'm.

Q What do you define as approval?

BY MR. BRADLEY:

Objection.

BY THE COURT:

Overruled.

A When Jerry Hill has signed one for Allenberg that half of it is already complete and then when the farmer signs it, it is a complete contract. Both of them. Jerry Hill won't be present but his name will be on it. Allenberg contracts their part of it and when the farmer signs it, it's a closed deal. Contract's a contract.

Q There's no question then, about the contract?

A That's my idea.

Q Whether Jerry Hill is present in your office or mails the contract to you?

A His name's on it, yes m'am and I know his signature.

Q Has any farmer ever re-negotiated a contract with you?

A I don't know what you're talking about there.

[fol. 64; Tr. p. 28]

Q Have you ever changed the terms or price or the terms in any way?

A No.

Q You've never bargained with a farmer to put more cotton under contract and to raise the price?

A No. They have adjusted some contracts.

Q Who has?

A Allenberg. With the people who had more acreage —planted more acreage after the contract was signed and they have made adjustments.

Q Did they come down into Mississippi and make these adjustments?

A Yes.

Q Who comes?

A Mr. Hill. I have had some adjustments and he has made some adjustments in Memphis on some contracts.

Q At your suggestion?

A Yes, but he would be the one who did it.

Q But the farmer would come into your office and talk to you?

A He would pray for an adjustment.

Q Would you tell him that you would have to contact Allenberg or not?

A I would.

Q Does Allenberg accept your recommendations with regard to adjustments?

A Well, they've been mighty fair people. I'll put it that way. They'll go along as long as they can.

Q What procedure is used for adjustments as far as you're concerned?

A None.

Q You simply call Allenberg?

[fol. 65; Tr. p. 29]

A Tell him this farmer has got more acreage and he would like to get an adjustment some kind of way. They usually will do that.

Q Does anyone come to your office to do that?

A Mr. Hill came down there on one or two occasions to try to do that.

Q He comes down from Memphis and gets the farmers in your office?

A Yes.

Q Has ever an adjustment been made without Mr. Hill's coming down?

A No'm. They write up the contract.

Q Mr. Hill brings the contract with him?

A Yes'm. A new contract is made when they make an adjustment.

Q Are you given a copy of this contract?

A Yes'm.

Q You keep it in your office?

A Yes'm.

Q No further questions.

RE-CROSS EXAMINATION

BY MR. BRADLEY:

Q This new contract is made in Memphis, is it not?

A Yes.

Q That's all we have.

EXAMINATION BY THE COURT:

Q I don't quite understand—what authority do you have from Allenberg Cotton Company?

A I don't know as I have any authority.

Q Have you ever yourself made a contract for and in the name of Allenberg?

A I have not.

[fol. 66; Tr. p. 30]

Q Do you have any authority to make a contract for

them?

A I do not.

Q What is your relationship with Allenberg Cotton Company? What are you instructed by them to do?

A Just to—well, I don't know what you'd call it. I'm not an agent. I just carry—

Q Don't define it, just tell me what you're instructed to do.

A Well, you mean on the contract cotton—

Q Yes, with regard to negotiating, arranging or bringing about a contract to sell cotton—

A The usual procedure is the farmer is contacted—

Q Now, what did Allenberg tell you to do about it?

A Well, they asked me if I can sell some contract cotton. How many acres can I buy at a stipulated price.

Q You solicit business for them? Is that it?

A That's right.

Q After soliciting business for them, how is that business brought fruition? How is it brought to a contract?

A They make the contract. I quote them that so and so will sell so many acres. I'll use Mr. Benson, say 800 acres of cotton. They use acres and not bales at a stipulated price.

Q You have discussed the matter with Mr. Benson and he's indicated the willingness to sell his cotton?

A Right.

Q To sell his cotton at a certain price?

A That's right.

[fol. 67; Tr. p. 31]

Q Then what do you do with that situation with Mr. Benson?

A I call Allenberg and tell them that Mr. Benson will put up 800 acres of cotton at a stipulated price. Then a contract—three—is mailed to me, with Mr. Benson's

name on it, his address and all the stipulations—micronaire and grade, staple—

Q Is this a complete offer and contract on the part of Allenberg?

A It is.

Q Before it reaches you?

A It is.

Q Then what do you do?

A I call the farmer and make contact with him in some way and he comes into my office and signs it. Signs all three copies.

Q He then signs the contract, if it's agreeable to him?

A That's right.

Q Previously Allenberg has signed the contract and sent it to you for consummation?

A Right.

Q That is by submitting it to the farmer for his approval and signature?

A Right.

Q After that what happens?

A I mail it back. I file one, mail Allenberg a copy and the farmer keeps one.

Q Then what happens?

A That's it as far as I'm concerned.

Q That's the contract?

A Right.

Q Do you do anything about the contract at any future date?

[fol. 68; Tr. p. 32]

A Not necessarily. As I said, if some of them are behind—

Q Would you state what instructions, if any, you've had from Allenberg about keeping up these contracts or notifying or giving them information about them?

A They insist that some of them are not delivering the cotton and want to know what's the matter with so and so—

Q Do you know what general procedure or how they get that information?

A They're not sending the cotton. They know which contract is being filled by drafts that I draw on them.

Q Has Allenberg instructed you to receive the cotton for them?

A That's the only way they can get it.

Q Then when the farmer has harvested his crop, the farmer is then told to deliver the class card and the receipts to you?

A Right.

Q For payment?

A Right.

Q Then you, through your office, the actual compress and warehouse receipts and negotiable warehouse receipts are delivered to you and you give the farmer a draft on a Memphis Bank in payment—

A I give him my check. My personal check. That is Covington Cotton Company check. I pay him. Then I draw a draft on Allenberg for this amount—the amount of the cotton plus $1.25 commission. Sometimes they pay it. Sometimes it's charged to the farmer.

[fol. 69; Tr. p. 33]

Just whichever way the contract reads.

Q Through that draft, drawn on a bank in Memphis, you attach the negotiable cotton warehouse receipts and the class cards?

A Right.

Q And that's the way you receive your compensation for what you have paid the farmer for them, plus your commission?

A Right.

Q I believe that's all.

BY MRS. GOLDMAN:

May I ask a few more questions, Your Honor?

BY THE COURT:

I hope they will clarify the situation.

FURTHER DIRECT EXAMINATION

BY MRS. GOLDMAN:

Q Do you buy cotton for Allenberg other than contract cotton?

A Yes. I don't necessarily buy for them. I sell to them or for them. I sell for other people. I don't just confine—I'm not restricted just to buy cotton for them.

Q Approximately how much cotton did you buy for Allenberg in 1970, which was not under contract?

A Between 6,000 and 7,000 bales of cotton. Maybe not that many to them, but the bulk of it went to them. They had a good price on low grade cotton. I bought, practically, most of it for them.

Q Do all farmers who want adjustments on their contracts contact you?

[fol. 70; Tr. p. 34]

A Yes'm. I don't know of any of them ever calling Allenberg directly. I have no knowledge of that.

Q No further questions.

(Witness excused.)

MR. JERRY HILL:

after first being duly sworn, upon oral examination, testified as follows, to-wit:

DIRECT EXAMINATION

BY MRS. GOLDMAN:

Q Mr. Hill, would you state your name to the Court please?

A Jerry L. Hill.

Q Where do you live?

A 1276 Pidgeon Perch. Memphis, Tennessee.

Q What is your occupation?

A Cotton buyer for Allenberg Cotton Company. Exclusively in charge of Memphis territory cotton.

Q You don't have any Mississippi cotton under your management?

A Mississippi cotton is considered Memphis territory cotton.

Q Where is your office?

A 104 South Front Street, Memphis, Tennessee.

Q That is the offices of Allenberg Cotton Company?

A Right.

Q What is your title?

A Cotton buyer.

Q Are you one of a number of cotton buyers?

A As I stated before I'm in charge of the Memphis territory cotton... Buying. We also have a man in charge

[fol. 71; Tr. p. 35]

of buying cotton in Texas. We have one in charge of buying cotton in California—Arizona.

Q Have you ever worked in any other territory except the one in which you're working now?

A Not on the terms as you would say working. I have gone to South Texas before and worked down there during the summer when the crop starts down there. It usually starts about the middle of July. We're not real busy in the office in Memphis and we'll go down and help out down

there.

Q What do you do in South Texas when you go down there?

BY THE COURT:

Is that relevant as to whether they're doing business in Mississippi?

BY MR. MAYNARD:

We object, Your Honor.

BY THE COURT:

Mrs. Goldman, if it does I want to hear from you, but I don't see where buying cotton off from somewhere has anything to do with here.

Q Is your procedure in South Texas in dealing with farmers any different than your procedure in Mississippi?

BY MR. MAYNARD:

We object to that.

BY THE COURT:

Sustained.

Q How much Mississippi cotton did you approve—

BY MR. BRADLEY:

Objection.

BY THE COURT:

Why is it relevant?

[fol. 72; Tr. p. 36]

BY MRS. GOLDMAN:

I want to see how much business Mr. Hill is doing in the State of Mississippi.

BY THE COURT:

Q Do you know how much cotton Allenberg bought from Mississippi during the 1970 harvest, approximately?

A It would be hard to say. I would say probably 25,000 bales, something like that.

BY THE COURT:

Q Do you know how much has been bought to date

from the 1971 harvest?

A I would say approximately 25,000 bales.

BY THE COURT:

Does that answer your question, Mrs. Goldman?

BY MRS. GOLDMAN:

Yes.

EXAMINATION CONTINUED BY MRS. GOLDMAN:

Q Do you come down into Mississippi and buy cotton which is not contract cotton?

A We have what you call these local, like Mr. Covington, a local cotton broker, and everything is handled through him. I don't come down and just solicit business. Everything is done and approved in Memphis before anything is done.

Q Then you never make any trips into Mississippi?

A I make trips, yes m'am. I do make trips. More or less social visits, social calls. People that you have done business with previously. I'll stop by, like Mr. Covington, I'll stop by and say hello to him.

[fol. 73; Tr. p. 37]

Q You say if you're down in this area, what do you do in this area for Allenberg Cotton Company?

A Like I say, it is more or less a social, not a social, but just a courtesy call or something like that. Most of my time is spent in the office in Memphis, Tennessee.

Q Have you ever contacted a farmer in Mississippi about the cotton?

A Not to my knowledge, no.

Q Who sets up your contacts with the farmers?

A I don't set any contracts with the farmer directly. Any contracting that is done is done through Mr. Covington or whoever's down here, but I don't come down and just deal directly with the farmers.

Q In 1971 did you come down with the contracts from Memphis to Mr. Covington's office?

A I did.

Q And have the farmers sign them?

A I did.

Q Were these contracts signed by you—endorsed, approved and signed by Jerry Hill?

BY MR. BRADLEY:

Objection. Leading.

BY THE COURT:

Yes, it's leading, but go ahead. We want to get through.

BY MR. BRADLEY:

But the terminology is very important on this—the way it's being asked.

[fol. 74; Tr. p. 38]

BY THE COURT:

I agree with you. Rephrase the question.

Q Did you approve and sign the contract before you left Memphis?

A Yes. The contracts were approved and accepted before I left Memphis. If they had not I would have not brought the contracts down.

Q Were they approved and accepted by you?

A The contracts were approved and accepted in the Memphis office by Mr. Ben Bayer, who is president of the company and myself. Everything that is done is discussed between Mr. Bayer and myself. He is president of the company. I am in charge of buying the Memphis territory cotton. So therefore, before any contract was drawn up, we both agree upon a price and if we think it's a good deal we'll draw a contract up. Nothing is approved or accepted other than in the Memphis office.

Q Is Mr. Bayer the—does Mr. Bayer ever sign one

of these contracts?

A Yes he does.

Q I notice on the contract that you brought to Mississippi, Mr. Bayer's signature was not there—

A That's true. He does not sign them all. Neither did I sign them all, but on the biggest part of the cases I have signed them and I have approved them.

Q Your Honor, may I ask him if he signed this contract and approved it?

[fol. 75; Tr. p. 39]

BY THE COURT:

Ask him and find out.

Q Did you sign that contract?

A Yes.

Q Did you sign it before you left Memphis?

A These are the two contracts that we're discussing now. Those two contracts were signed down here. But they were approved and accepted before they left Memphis, Tennessee. If they hadn't been accepted we would not have drawn the contracts up to begin with and I would have not been down here to begin with. The normal procedure is, to have the contract drawn up in Memphis, signed and approved in Memphis and sent to Mr. Covington or whoever we're doing business with—sent to them and it is signed by the farmer—three copies—one to the farmer, one to Mr. Covington and one to us in Memphis. That is the normal procedure. I was coming down this way—in this particular case here.

Q Why did you come?

A It wasn't specifically for that. I may have been going to Greenwood or to Greenville, Mississippi or someplace and I brought the contracts down with me.

Q This is marked approved and accepted by you on

this date—

A Right.

Q Did you report to your office on January 28, 1971?

A No. It was already approved and accepted before I came down here. Although I put my signature on it down here. It was accepted in the office in Memphis,

[fol. 76; Tr. p. 40]

Tennessee. Like I have said twice before, I would never have drawn contracts up if they hadn't been accepted....

BY THE COURT:

Excuse me. You're talking about a contract and I believe you've simply asked the witness about a contract. For the record, would you identify the contract that you're talking about and for my help.

BY MRS. GOLDMAN:

This particular contract with H. T. Pittman was marked—it's a contract with H. T. Pittman of Marks, Mississippi—

BY THE COURT:

Is this the original of the contract which is an exhibit to the Bill of Complaint pending before the Court?

BY MR. HILL: (witness)

Your Honor, this is a copy of the original.

BY THE COURT:

That's one of the original copies.

BY MR. MAYNARD:

Yes, sir.

CONTINUED EXAMINATION BY MRS. GOLDMAN:

Q Did you bring other contracts to Mississippi at the same time that you brought this contract down on January 28, 1971?

A Mr. Ben E. Pittman.

Q No other contracts that you brought to Mississippi and signed in the presence of farmers?

A I think Mr. Covington named three other people and I believe that's all to my knowledge. Mr. James Harris,

[fol. 77; Tr. p. 41]

Mr. B. B. Pennington, and Harold Max Chrestman.

Q Did you bring those the same day?

A I don't remember the day.

Q How much of your time do you spend in Mississippi?

A Very little. I couldn't tell you the days or hours. Very little time do I spend in the State of Mississippi. Most of my time is spent in the office in Memphis.

Q Do you buy cotton on the telephone?

A Right.

Q When you buy Mississippi cotton on the telephone, how is the delivery on that cotton made?

BY MR. MAYNARD:

Objection, Your Honor, that's not the case here.

BY THE COURT:

Overruled.

A If I'm dealing with Mr. Covington or anyone, they'll call up and say—"Jerry, I've got 100 bales on hand" and want to know what kind of price or he'll tell me what kind of price he'll have to have for the cotton, and I'll say, "Well, what kind of cotton is it" and he'll give me a recap of the green card class and if I think it's high I'll say, "No, I'm not interested". If I think the cotton is in line with what we're paying for other cotton in other area I'll say, "Okay" and he'll draw a draft. He puts his receipts and the green cards in a draft and draws them on Allenberg.

BY THE COURT:

Q What do you mean green cards?

A Class cards.

[fol. 78; Tr. p. 42]

Q Do you contact farmers on the telephone or ever talk directly to farmers. Do you only talk to buyers?

A Buyers.

Q You've never bought cotton from farmers over the telephone?

A In some instances I may have. I don't really recall right off hand.

Q Do you approve contract cotton in other states other than Mississippi.

A I say, Memphis Territory. Memphis territory consists of other states other than Mississippi.

Q Do you yourself approve cotton from other states other than Mississippi?

A Right.

Q In what other states?

A Missouri, Arkansas, Tennessee and Louisiana.

Q Do you go into the other states?

A I make visits like I do here.

Q Do you ever call Mr. Covington and tell him you need a certain amount of cotton and ask him to buy it for you?

A If I'm in the market for buying cotton I'll call Mr. Covington and say I would like to buy some cotton and he'll say either, well I can either buy some or I can't. Usually when a cotton firm is in the market, they'll call people that they usually do business with and tell them they're in the market. You're in the market and you're out of the market. It's a day to day thing. It fluctuates just like the prices do. I wouldn't call him and say I want to buy a 100 bales. I'd just call him and say I want

[fol. 78; Tr. p. 43]

to buy some cotton. It may be a 100 bales, it may be 200, I don't know.

Q And that cotton is delivered to his office?
A Right.
Q And he pays the farmer for that cotton?
A Absolutely.
Q And then draws a draft on Allenberg Cotton Company?
A Right.
Q No further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

Q You mentioned that you approved and you buy—do you make decisions on when and how to buy cotton yourself?

A Well, like I said, Mr. Bayer is president and he more or less says—before he became president he was in charge of the selling and buying of Memphis territory cotton, so anything is done now, we discuss with each other. We kind of set the price. We usually know what the price is. He'll ask me what I want to do and in turn I'll ask what he wants to do and then we'll agree upon a price or what we want to do, what position we want to take.

Q Do you take positions individually with reference to the price and approval of contracts on your own initiative without the advice and consent of other officials of the company?

A No, sir. He always has to put his approval on them.

Q Is the cotton which you purchase for Allenberg, with the advice and consent of the officials of the company, purchased for interstate shipment—those contracts

[fol. 80; Tr. p. 44]

which are purchased in Mississippi, are they purchased for interstate shipment of the cotton to other foreign states

and countries?

BY MRS. GOLDMAN:

I object to that.

BY THE COURT:

Overruled.

A Right.

Q Is the cotton which you have purchased in Quitman County, cotton already sold by Allenberg before it is ever purchased by your firm?

A Right. In most cases, yes, it is. Either sold to a mill or—

Q Well, with reference to both Pittman cases, senior and junior, was the cotton acreage already sold to mills for interstate shipment before you made these contracts?

BY MRS. GOLDMAN:

I object, Your Honor, on the grounds that the Ben E. Pittman case is not being heard at this time.

Q Well, is it correct with reference to H. T. Pittman?

A Yes, sir.

Q You mentioned the storage of 25,000 bales of cotton in this State last year—is this cotton stored temporarily until it can be shipped in interstate commerce?

A Yes, sir.

Q Does your firm ever reject contracts which are submitted by Mr. Covington—proposals which are submitted by Mr. Covington?

A Right.

[fol. 81; Tr. p. 45]

Q Does Mr. Covington have any authority on his own, under any circumstances to approve proposals or contracts sent to your office?

A No, sir.

Q Can he alter the terms of contracts submitted by your firm?

A No, sir.

Q Can he execute a contract for and on your behalf?

A No, sir.

Q Do you have or does the firm have any offices in the State of Mississippi?

A No, sir.

Q Does it have any employees in the State of Mississippi?

A No, sir.

Q Does it have any agents in the State of Mississippi?

A No, sir.

Q I believe that's all.

RE-DIRECT EXAMINATION

BY MRS. GOLDMAN:

Q Do you work in the shipping department of Allenberg Cotton Company?

A When I am in the office in Memphis and when I'm not on the phone buying cotton, I'm in the cotton room, classing or shipping cotton, yes.

Q So you are not a cotton buyer?

A Cotton buyer—that is my official title. In these terms, in the days of your high cost and everything, a person who has any knowledge of cotton at all, he does other things other than buy. He also chips in and helps ship cotton too.

[fol. 82; Tr. p. 46]

Q Of your own personal knowledge, has Allenberg ever rejected a contract that was signed in the office of Mr. Covington in Marks, Mississippi?

A No—that was previously signed by Allenberg—

Q Yes.

A No.

Q Does Mr. Covington deal with you when he contacts Allenberg?

A On most occasions he does. Like he stated, when I was in Texas, Mr. Bayer bought, my recollection was about three different crops. Mr. Bayer approved and accepted as president of the company. He also deals with Mr. John Howard in our office when I'm not present.

Q If a Mississippi farmer wants to make an adjustment on his contract, does a cotton buyer contact you about any adjustments?

A He will come to Mr. Covington and express his grievances, whatever they may be, Mr. Covington in turn will call me and say well this John Jones has 50 extra acres, is there any way we can make any adjustments on it. I will then talk to Mr. Bayer about it and if we agree upon it, a new contract is made, approved and accepted in Memphis and sent to Mr. Covington.

Q Do you have an office at Allenberg Cotton Company?

A Yes.

Q Does a secretary type the information on a contract on the contracts that Mr. Covington solicits for you?

A Yes.

Q Do all calls with reference to these contracts come into your office?

A The information from Mr. Covington comes into my office, yes.

[fol. 83; Tr. p. 47]

Q To your personal knowledge, is there any arrangement with the switchboard of the Allenberg Cotton Company to channel discussions of Mississippi cotton to your office?

A Well, when Mr. Covington calls in, he just doesn't call in and say this is Mr. Covington. He says I want to speak to Jerry Hill. It's channeled that way.

Q When I called Allenberg, I was told, just a moment I'll refer you to the Mississippi Division—are you familiar with this procedure?

BY MR. MAYNARD:

We object. We think it's irrelevant and we object on that ground.

BY THE COURT:

Sustained. I don't think it's important how they might route calls from unknown persons.

Q That's all.

RE-CROSS EXAMINATION

BY MR. BRADLEY:

Q When you say your office, you mean the office of the firm?

A Well, I have an individual office in Allenberg Cotton Company, as other people do. You have to have some place to have a desk . . . telephone.

Q I believe that's all.

(Witness excused.)

[fol. 84; Tr. p. 48]

MR. BEN E. PITTMAN:

Defendant, after first being duly sworn, upon oral examination, testified as follows, to-wit:

DIRECT EXAMINATION

BY MRS. GOLDMAN:

Q Mr. Pittman, have you ever been solicited by the Allenberg Cotton Company to contract your cotton?

A I'd been notified by Mr. Covington that they wanted my cotton.

Q What procedures did they use to get this information about your crop from you?

A I don't know how they got it all. Mr. Covington, I'd see him once or twice a week and he has asked me in the past how many acres of cotton and I told him in general about how many acres of cotton I thought I'd have.

Q Nobody else from Allenberg secured that information from you?

A No.

Q Were you contacted by Mr. Covington in January of 1971 to come to his office?

A I was.

Q What did he say in that conversation?

BY MR. MAYNARD:

We object to that. Mr. Covington is not part of this suit. That's hearsay.

BY THE COURT:

This transaction was negotiated through Mr. Covington and one of the issues may be his status in it. So you may answer the question.

[fol. 85; Tr. p. 49]

A Mr. Covington called and said Mr. Hill was at his office and had a contract and wanted me to come down and talk to him and see about signing it.

Q Was any discussion between you and Mr. Hill after you arrived at Mr. Covington's office about the contract?

A We just talked in general there. I don't know exactly what it was about. But we signed the contract there.

Q Did you discuss the terms of the contract with Mr. Hill?

A Yes, I did.

Q Did Mr. Hill at any time say the contract had to be approved in Memphis?

A No.

Q Did he at any time say the contract had already been approved?

A No, he didn't.

Q Was there anything to indicate to you that this contract might be rejected by Allenberg?

A No.

Q Were there any other farmers in Mr. Covington's office when you were there?

A Just me.

Q No further questions.

CROSS EXAMINATION

BY MR. BRADLEY:

Q What time did you arrive at the office, if you can recall?

A I can't recall.

Q Do you remember what day it was?

[fol. 86; Tr. p. 50]

A No.

Q Did you go to the office more than one day to discuss this—

A No, I didn't.

Q That's all.

(Witness excused.)

BY MR. MAYNARD:

Your Honor, we would make a motion to strike his testimony because it's in reference to Mr. Ben Pittman's contract, not Mr. H. T. Pittman's contract.

BY MRS. GOLDMAN:

Your Honor, this testimony is put on by a farmer about the activities of Jerry Hill.

BY THE COURT:

I don't believe you identified what contract was signed.

If you want to recall the witness to identify what contract was signed, you may do so.

(Mr. Pittman is recalled to the stand by the Court)

BY THE COURT:

Q Mr. Pittman, you've testified about an occasion when you met Mr. Hill in Mr. Covington's office in Marks, and mentioned the signing of a contract or contracts, by you and Mr. Hill. What contracts were these?

A Contracts of Ben E. Pittman and H. T. Pittman.

Q Was the contract the one of H. T. Pittman now pending before the Court?

A Yes, sir.

Q Also one in a similar suit pending against you, by Allenberg Cotton Company?

[fol. 87; Tr. p. 51]

A Yes, sir.

Q Stand aside.

BY MR. MAYNARD:

Your Honor, I would like to ask a question.

FURTHER CROSS EXAMINATION

BY MR. MAYNARD:

Q I presume you have the right to sign for your father?

A No, sir, I found out that I didn't.

Q Why did you sign?

A I was under the understanding that Mr. Hill and them had talked to daddy and the way it was presented to me, I thought it was all right with him.

Q When did you advise him you'd signed?

A The next time I saw him which was the next morning.

Q After you advised him, do you know whether or not

he disaffirmed the contract?

A I know the next time he saw Mr. Covington, he told him that I didn't have the right to sign for him and he wasn't going to deliver.

Q Wasn't that in the fall of the year and cotton had gone up considerably?

A No, two days later.

Q Were you there?

A No, sir.

Q You don't know then. You were not present?

A Mr. Covington was there and he also told me—

Q I know, but that's hearsay. That's all.

[fol. 88; Tr. p. 52]

RE-DIRECT EXAMINATION

BY MRS. GOLDMAN:

Q Did you disaffirm the contract yourself?

A Yes, I did. I told Mr. Covington.

Q When did you disaffirm the contract?

A I'd say a week—

BY THE COURT:

I think we're getting off on an issue that is not before the Court at this time.

(Witness excused.)

MR. CRAWFORD:

called as an adverse witness, after first being duly sworn, upon oral examination testified as follows, to-wit:

CROSS EXAMINATION

BY MRS. GOLDMAN:

Q Mr. Crawford, would you state your position with Allenberg Cotton Company to the Court please?

A Secretary-Treasurer.

Q How long have you filled this position?

A In excess of 20 years.

Q Are you familiar with the organization and the details of it?

A Yes, I am.

Q Have you ever qualified the Allenberg Cotton Company to do business in another state?

A In other states, yes.

Q Are you the person who in the firm—

A I would.

Q Who did this .... what system do you use for getting

[fol. 89; Tr. p. 53]

a certificate of authority in a state. Do you first send an inquiry to the—

BY MR. MAYNARD:

We object to that.

BY THE COURT:

Sustained.

Q Do you have a domestic incorporation in any other state beside Tennessee?

BY MR. MAYNARD:

We object to that. That's irrelevant.

BY THE COURT:

I don't understand the significance of your question—do you have a domestic corporation—

BY MRS. GOLDMAN:

Some corporations domesticate rather than qualify—

BY THE COURT:

You didn't say that.

Q Have you domesticated in any state in the union—

BY MR. MAYNARD:

We object to that, Your Honor.

BY THE COURT:

The question here is whether they are authorized to do business in the state of Mississippi.

Q You're familiar with your Articles of Incorporation?

A I think so.

Q Basically your purposes as a corporation are to buy and sell cotton?

A Yes.

Q So you would say that that purpose splits about 50% buying and 50% selling?

[fol. 90; Tr. p. 54]

A Overall, it has to.

Q Or else you don't come out?

A That's the business.

Q And the hedging and things like that you do—

BY MR. BRADLEY:

Objection.

BY THE COURT:

Sustained.

Q Are you familiar with the Mississippi Division of the Allenberg Cotton Company?

BY MR. BRADLEY:

Objection.

BY THE COURT:

Overruled.

A I'm familiar, but there's a lot of specifics that Jerry would carry on in his buying—

BY THE COURT:

Be more specific about what you mean by Mississippi Division.

Q Do you have any separation within your firm according to states?

A Yes.

Q Is the separation according to the business you do

in different states?

A It's according to territories, regions, sections of the country.

Q Do you handle Arizona cotton?

BY MR. MAYNARD:

We object.

BY THE COURT:

I think it's immaterial.

[fol. 91; Tr. p. 55]

Q Are you qualified to do business in other states besides Tennessee?

A Yes.

Q What other states?

A California, Arizona and Texas.

Q Do you do Arizona business in your office in Tennessee?

BY MR. MAYNARD:

We object, Your Honor.

BY THE COURT:

What's the relevancy of that?

BY MRS. GOLDMAN:

The relevancy is that the business which they are doing in Mississippi is duplicated in Arizona, California and Texas and they have qualified to do business in those states.

BY THE COURT:

I don't know whether it's duplicated and I don't know whether the statutes and requirements and desires of one state are the same as another.

BY MR. BRADLEY:

For the Court's information, they maintain offices in those other states.

BY MR. MAYNARD:

The point is, it's irrelevant.

BY MRS. GOLDMAN:

The relevancy of it is that they're carrying out the purposes of the Allenberg Cotton Company according to its domestic incorporation .... in other states as well as Mississippi.

BY THE COURT:

Just to try to move along, I'll let him answer the question, though I think it's immaterial.

[fol. 92; Tr. p. 56]

Q Does your Memphis, Tennessee office contract any Arizona business?

A Yes. Overall, business transactions are governed, controlled, policies set in Memphis. Contracting in those states in which we have qualified, as a foreign corporation, can be and is and at times done locally. But at prices, terms, conditions is set by the policy making people of the company. Now in these states the laws were such that attorneys advised us that we had to qualify with the secretary in order to carry on the transactions that we proposed to do. So we had to qualify with the Secretary of those respective states. And also, any of their requirements—one would be that we had employees in those states.

Q I believe that your employee, Jerry Hill—

BY MR. MAYNARD:

Your Honor, certainly Arizona has nothing to do with this Mississippi case.

BY THE COURT:

I don't think it has anything to do with it.

BY MRS. GOLDMAN:

The thing that I wanted to offer into proof is the fact that Allenberg has carried out the purposes of this corporation in other cotton states—

BY THE COURT:

I'm going to say that the Charter speaks for itself and

I presume that they're trying to carry out the business that is authorized under the charter.

[fol. 93; Tr. p. 57]

Q Do you carry out any of your purposes in other states that you do not carry out in Mississippi? As a corporation?

BY MR. MAYNARD:

Objection,... same question.

A The situation is different or else we wouldn't have qualified in those states. Their laws are different.

Q There laws are different but don't you always qualify according to the purposes stated in your—

BY MR. BRADLEY:

Objection—legal conclusion.

BY THE COURT:

That's a legal question. Conclusion.

Q Do you qualify according to the purposes—

BY THE COURT:

They couldn't qualify any other way.

BY MR. MAYNARD:

Well, we object to this.

Q I believe you said you answered this interrogatory?

A Yes.

Q You set out in the interrogatory that some of the information on the contract is put in in Mississippi?

A Such as the spelling of a person's name, sometimes, the enumeration of the exact acreage, description and so forth, which might have been lacking or failed to have been put down over the phone in conversation with the local broker.

[fol. 94; Tr. p. 58]

Q Is there any call back to Memphis after this infor-

mation is entered?

A Not that I know of.

Q It is typed onto the contract in the Mississippi office?

A It can be done, if anything is lacking that is necessary to the contract, it could be done by our buyer.

Q How much cotton would estimate that Allenberg has in warehouses in Mississippi?

A I have no way of knowing without taking an inventory. We have a perpetual inventory, that's the nature of our business. It could be determined, found and all, but we do have and handle a fair amount of cotton volume wise, of Mississippi cotton.

Q Have you ever conferred with counsel about qualifying to do business in the State of Mississippi?

A No, because it was not necessary to qualify with the Secretary of State.

Q Have you written the Secretary of State of Mississippi, and had a letter from him—

A I have not.

Q Have you ever made any attempt to qualify in the State of Mississippi?

A No.

BY THE COURT:

I don't think we have an issue on whether they've domesticated as you're using the term—The issue is whether they are doing business in Mississippi within the meaning of the statute.

[fol. 95; Tr. p. 59]

Q Shipping is a great aspect of your selling of cotton, isn't it?

A Yes.

Q Do you ever ship any cotton from Allenberg Cotton

Company in Memphis or is it shipped from the warehouses?

A The orders originate in Memphis, shipping orders, which are bale listings and instructions to warehouses of what bales to pull or break out as they call it--compressed, marked and so forth. Those orders are surrendered to the warehouses in Mississippi along with the respective warehouse receipts for shipment. The interstate commerce carrier to domestic mills, mostly located in Alabama, Georgia, South Carolina and North Carolina and to foreign mills—Europe, Asia, so forth.

Q Is your cotton already sold before it's shipped?

A Yes or we wouldn't be putting it under shipping orders.

Q So, the interstate commerce part is not under your company's control—

BY MR. BRADLEY:

Objection.

Q The cotton is in the control of the mills when it leaves—

A No, no, we have contracted for delivery to a mill in the same manner as we contracted to take delivery from a grower or seller. Now the mill—we don't take title for a mill. We take title of cotton for our own, within our name to fulfill some obligations and contracts we have with mills.

[fol. 96; Tr. p. 60]

Q As I understand the law of shipping, the title transfers to the carrier when the cotton leaves the warehouse?

BY MR. BRADLEY:

Objection.

BY THE COURT:

Sustained. If you want to educate me on what is the law of shipping, I will be glad to hear from you. The

process which you are referring to broadly as shipping involves the sale of cotton and its ultimate transmittal to the buyer, which is as I understand the witness, in their business is usually the one who ultimately uses the cotton for spinning it into yarn and ultimately into cloth, beginning with the processing of it. If you have reference to some specific phase of this shipping, I wish you would be specific about it.

A I would like to add further to this question, that our contracts for sale or for delivery up to the mills' warehouse and foreign mills' port's warehouses and the title doesn't pass until the mills, foreign mills, have paid us for the cotton.

Q Does Allenberg Cotton Company maintain its own interstate carrier?

A No.

Q Has Allenberg ever sued a carrier for damages of cotton?

BY MR. BRADLEY:

Objection.

BY THE COURT:

Sustained.

[fol. 97; Tr. p. 61]

Q Are you familiar with the Pittman cases?

A Only what I have heard in these last few days, beginning last week, as to the specific contracts. But I have become familiar, as all of us have, during this last week or 10 days.

Q Are you familiar with the amendments to the Bill of Complaint that have been made?

BY MR. BRADLEY:

Objection.

BY THE COURT:

Mrs. Goldman, if you have a specific question, please

ask it, and let it be factual.

Q Did you work out the amendments to the bill of complaint in the Pittman cases, which was filed a few days ago?

A No, counsel did.

Q Did you confer with counsel as the Allenberg representative in the working out of details in this amendment?

A I believe my answer to that would be yes. Specifically, I don't know. I'd have to ask counsel to advise me on that.

BY MR. BRADLEY:

May it please the Court, I'm not sure that there are any amendments in this file. In fact, I don't think there are any amendments.

(Off record discussion)

BY THE COURT:

There was a motion made when you raised the question at the hearing last week as to an allegation in the bill as to where the contracts were signed.

[fol. 98; Tr. p. 62]

BY MRS. GOLDMAN:

The allegations in the bill say the contracts were made in Marks, Mississippi, and the first amendment was— the allegation of the first bill was that it was made in Memphis, Tennessee. The first amendment said it was made in Marks, Mississippi. The second amendment said it was made in Marks with the approval of the Memphis, Tennessee office.

BY THE COURT:

Well, now, please don't question this lay witness in detail about what conferences he might have had with his attorney. If there are some factual issues that have been brought to your attention by these amendments or changes

in the pleading, direct your questions, please, to the facts.
BY MRS. GOLDMAN:
My offer of proof with this question was—
BY THE COURT:
Ask him the question.
Q Have the facts in this situation been changed to meet the law?
A To the best of my knowledge, yes.
Q No further questions.

DIRECT EXAMINATION

BY MR. BRADLEY:
Q You answered that the facts had been changed to meet the law. Would you elaborate on that?
A To the best of my knowledge, I'm assuming that counsel would have set forth those things which needed to meet the law.

[fol. 99; Tr. p. 63]

Q Do you know of any facts that have been changed by any of the pleadings or whether the pleadings were made to present facts to the Court?
A The pleadings were made to present the facts, as I see it.
Q All right, with reference to the purchase of cotton. Do you purchase cotton in the State of Mississippi that you don't have sold in interstate commerce before you purchase it?
A No.
Q In other words, all the cotton you purchase is already sold prior to the time you purchase it from growers in Mississippi?
A That's the business we're in.
Q In order we clear the record, in event this record

or this case is appealed, we have talked about offices that your company maintains in other states, or rather the qualification of your company to do business in other states. Are you qualified to do business in any other states where you do not maintain an office?
A No.
Q I believe that's all we have.

RE-CROSS EXAMINATION

BY MRS. GOLDMAN:
Q Is not one of the requirements to qualify to do business in another state, that you maintain an office or an agent within that state?
BY MR. MAYNARD:
We object to that.
BY THE COURT:
Sustain the objection.

[fol. 100; Tr. p. 64]

BY THE COURT:
Our issue here is the relationship to Mississippi, to the parties involved here and the Mississippi statute.
BY MRS. GOLDMAN:
Your Honor, they've brought out that the company maintains offices in other states. It is a requirement of qualification that you must maintain an office in a state.
BY THE COURT:
Well, argue on the law, with your demurrer or whatever. It's not his opinion.
Q Do you maintain offices in any state in which you are not qualified to do business?
A We have some, yes. We have legal, statutory representatives in that state and that's all that's necessary. In fact, the CTC Corporation of New York City is our

legal representative in each of those states. Even though we have an office and an address in each of those states on advice of counsel. These people are our representatives.

Q So your corporation trust is your agent?

BY MR. MAYNARD:

We object to that, Your Honor.

BY THE COURT:

I sustain the objection.

BY MRS. GOLDMAN:

No further questions.

[fol. 101; Tr. p. 65]

BY MR. MAYNARD:

I'd like to ask a few questions.

BY THE COURT:

Is it all right for Mr. Maynard to examine the witness?

BY MRS. GOLDMAN:

I object.

BY THE COURT:

Mr. Bradley...

BY MR. MAYNARD:

I ask permission of the Court to be allowed to examine the witness.

BY THE COURT:

Denied.

BY MRS. GOLDMAN:

No further questions of this witness.

(Witness excused.)

BY MRS. GOLDMAN:

Your Honor, I would like to put counsel for the complainant on the stand. Mr. Bradley.

BY THE COURT:

All right, do you waive oath?

MR. BILL BRADLEY:

counsel for complainant, after first being duly sworn, upon oral examination, testified as follows, to-wit:

CROSS EXAMINATION

BY MRS. GOLDMAN:

Q Mr. Bradley, did you represent the Allenberg Cotton Company in filing a suit against H. T. Pittman previous to the filing of the suit that is under consideration today?

[fol. 102; Tr. p. 66]

A I've represented them on each case.

Q Did you....

BY THE COURT:

Be more specific about the other suit, please.

Q On which the number was 7639 in the Chancery Court of Quitman County? Filed November the 3rd.

A We've filed all lawsuits in Quitman County that have been filed in the past 3 months.

Q Did you state in the bill of complaint in this suit that the Allenberg Cotton Company was a corporation authorized to do business in the State of Mississippi?

BY MR. MAYNARD:

We object to that.

BY MR. BRADLEY:

If it please the Court, this suit's been dismissed—

BY THE COURT:

Sustain the objection.

Q Did you file the bill of complaint against Mr. H. T. Pittman in the Chancery Court of Quitman County No. 7643—

A We've filed all bills of complaint....

Q In the bill of complaint did you state that defendant and complainant entered into a written contract, which was agreed on in Marks, Mississippi on January 28, 1971?

BY MR. MAYNARD:

We object, Your Honor.

BY THE COURT:

Those pleadings, if they're relevant, you can introduce them. Let them speak for themselves, without questioning the attorney. I know, because they were

[fol. 103; Tr. p. 67]

before me in my court, these two suits that were filed, perhaps about a month ago. About seven or eight days before the October or November term of court, I believe it was, in Quitman County. And on the return day, the two suits, one against Mr. Ben Pittman and one against H. T. Pittman, and the complainant appeared and took a voluntary non-suit. The suits were dismissed without prejudice. Now, do those pleadings have any relevance here? I don't think it wise and I don't think it's proper to put a lawyer on the stand and to cross examine him about how he may have handled some litigation, and the day may come when the person who opened it up might be sorry about it, because there's always somebody who can look back and say—well, you made a mistake.

BY MRS. GOLDMAN:

No further questions. And no further witnesses.

BY THE COURT:

Do you rest?

BY MRS. GOLDMAN:

I rest. I would like to make a motion before this Court that complainant's case be dismissed at this time—

BY THE COURT:

Make it. Don't tell me you'd like to. This Court is open.

BY MRS. GOLDMAN:

I move this Court at this time that this cause of action against the defendant H. T. Pittman be dismissed

[fol. 104; Tr. p. 68]

on the grounds that the Allenberg Cotton Company of Memphis, Tennessee is doing business in the State of Mississippi and is not qualified to do so according to Mississippi law, and so is not entitled to use the courts.

BY THE COURT:

Mrs. Goldman, we were hearing this case on that motion or a similar one. I take it now, you want to deny the complainant the right to be heard. I will not deny the complainant the right to be heard. The motion is denied.

BY MR. BRADLEY:

We'd like to call Mr. Covington back as our first witness.

(Mr. Covington takes the stand and is considered still under oath:)

DIRECT EXAMINATION

BY MR. BRADLEY:

Q Would you state in your own words, who approached whom about the sale of the cotton with reference to Mr. Pittman, Sr.?

A His son. Ben E. Pittman.

BY MRS. GOLDMAN:

Your Honor, I object to that line of questioning since we're hearing the first offense—the second offense, by the choice of the complainant.

BY MR. MAYNARD:

Your Honor, the relevancy of this is perfectly clear. Mr. Ben Pittman left the impression that the first time he

heard about the contract was when Mr. Covington called him to come into the office, and then he stated

[fol. 105; Tr. p. 69]

that he negotiated back and forth with Mr. Hill. Our testimony here is to partially repute that testimony to show that there were no negotiations between Mr. Hill and Mr. Pittman because Mr. Pittman had already agreed on the terms and then sent the message through Mr. Covington, accepted in Memphis, the contract drawn accordingly and sent down here for both Pittmans to sign.

BY THE COURT:

We are still hearing on this question about the part of your pleading of affirmative defense that I've indicated was a plea of abatement and your motion that it be set down for hearing, set for today at this time. We are still on that motion. Mr. Covington will be permitted to testify. Confine your questions please to those phases of his knowledge.

A Ben E. Pittman approached me about a contract. 22¢ for cotton. We talked on this contract. I called Allenberg several times on this contract—the specifics of the contract. It was my understanding that Ben E. was speaking for his cotton and for his father's cotton. I have never talked to H. T. Pittman.

Q Who approached whom about the contract. That's what we want you to explain to the Court?

A Ben E. Pittman approached me.

Q After he discussed this matter with you, what did you do at that time?

A I called Allenberg to see if they could get a contract. They were contracting mainly on so much over the government loan. He wanted a flat price.

[fol. 106; Tr. p. 70]

He wanted a specific price on his cotton, of which they hadn't been used to contracting. That was my understanding. But when they come up with a contract that was suitable for him.

Q Did Allenberg arrive at a figure suitable for all parties?

A They did with Ben E.

Q Was this done prior to the time that Mr. Hill came to the city of Marks?

A It was.

Q That's all we have.

BY THE COURT:

I'd like to be a little more specific about that.

Q Was this agreement, that might have been tentative in nature, had and agreed to between Allenberg Cotton Company in Memphis and with Mr. Pittman in Quitman County, Mississippi, before the contract was signed by Mr. Hill and Mr. Pittman, I believe in your office on the 28th day of January, wasn't it, 1971?

A The prices were agreed upon with Ben E. Pittman. The discounts and whatever, in other words, before were written up. They were understood.

BY THE COURT:

No further questions.

FURTHER DIRECT EXAMINATION

BY MR. BRADLEY:

Q You said they were understood, not only that, but they were reduced to writing, weren't they?

[fol. 107; Tr. p. 71]

A Well, Allenberg reduced them to writing in a contract.

Q That's what I mean . . .

A I never had any dealings with anybody except Ben E. on what he was asking and he was speaking for his father, was my understanding. I called Allenberg and asked them if they could arrive at this contract and Mr. Hill came down later with them. Ben E. was there. His father was not.

Q Were the terms of the contract those which you had submitted to Allenberg and had been approved by Allenberg?

A They were.

Q That's all the questions we have.

CROSS EXAMINATION

BY MRS. GOLDMAN:

Q I believe you said that Mr. Ben E. Pittman approached you?

A Yes.

Q By what do you mean approached?

A He wanted a contract. Wanted to know what he could sell his cotton for.

Q Did you ever mention contracting the cotton to Allenberg before he approached you?

A No.

Q I believe you said that he said he wanted a 22¢ contract?

A Yes'm.

Q That was approved in Memphis?

A It was.

Q The contract he signed was for 21¢. Were you aware of that?

[fol. 108; Tr. p. 72]

A It could have been 20¢. Certain grades. Certain

micronaire. Certain staples—reduced in classes on account of grass and bark, other matter. Cotton could be at different prices, according to the contract. But the contract itself stated 22¢ for cotton with premium micronaire—maybe reduced on account of grass and bark.

Q Did you negotiate the price and all with Mr. Pittman, in Mississippi?

A He understood what he was doing.

Q Did you get from him the information about his acreage?

A Yes. He told me approximately what he had.

Q And then you had Mr. Hill of Allenberg Cotton Company to come to your office and bring the contract?

A He did.

Q And they were signed in Mississippi?

A I don't remember clearly about whether he signed it in my office or signed it in Memphis.

Q There was no communication with Allenberg Cotton Company from your office?

A No'm.

BY THE COURT:

Now, be more specific. Don't be trying to ball the Court, or the record or the witness up. As I understand, witnesses definitely testified that there was communication with Allenberg about the contract. If you have some specifics in mind about it—the communication, please be specific about it.

[fol. 109; Tr. p. 73]

Q Did the contract that you had that Mr. Ben E. Pittman signed in your office, have all the terms on it?

A Yes.

Q And you did in that contract offer to pay Mr. Ben E. Pittman 22¢ for his best cotton?

A That's what the contract reads.

Q You negotiated that price with Mr. Pittman in Mississippi. Is that right?

A Yes.

Q Have you ever approached a farmer and solicited contracts for Allenberg Cotton Company?

A Yes.

Q Have you approached farmers in Marks, Mississippi and in Quitman County, soliciting cotton contracts with Allenberg Cotton Company?

A Yes.

Q No further questions.

(Witness excused.)

(MR. CRAWFORD IS RECALLED TO THE STAND AND IS CONSIDERED STILL UNDER OATH)

DIRECT EXAMINATION

BY MR. MAYNARD:

Q Mr. Crawford, in answer to one of Mrs. Goldman's questions, you stated that most of the cotton which was stored in Mississippi, preparatory to being transported, was transported mostly, and then you named certain states. Was all of it transported in interstate commerce on interstate carriers outside the State of Mississippi, to another state or foreign country?

[fol. 110; Tr. p. 74]

A Yes. All of it.

Q I believe you stated that you had no offices in the State of Mississippi?

A No offices.

Q No agents and no employees?

A No agents and no employees.

Q Is the manner in which Allenberg handles this particular transaction, is that common in the cotton trade?

A As far as we know. All of us do the same thing. We're a highly competitive business.

Q Did Mr. Covington, who's previously testified in this case, did he have any authority from your company to bind your company in any way on the purchase of cotton crops such as the one in this particular Pittman case?

A No.

Q Did he have any authority to agree to any of the terms of any such contract and thus bind Allenberg?

A No.

Q Did he have any right or did he ever exercise any right to sign any contracts with reference to the purchase of cotton crops such as the one in the present Pittman case?

A No.

Q Were any cotton contracts such as the one in this particular case, complete binding or valid without the acceptance and approval of Allenberg Cotton Company in Memphis?

A None.

Q That's all we have.

[fol. 111; Tr. p. 75]

CROSS EXAMINATION

BY MRS. GOLDMAN:

Q Did you state that the Allenberg Cotton Company owned no interstate carriers?

A We do not own any.

Q I believe you stated earlier that the main purposes of the company were buying and selling cotton?

A Yes.

Q I believe you also stated that into these Allenberg contracts some additional information has been typed in

the State of Mississippi, from time to time. Like the acreage?

A There may have been. Could well have been.

Q After that is typed into a contract in Mississippi, is there any communication with the Allenberg Cotton Company in Memphis, before the farmer leaves the office of your representative?

A If it were of a sufficient size, value—about the contract, it would,—yes, but for example, if a general amount of acreage were known by us and the specific amount of acreage was determined locally and turned out to be substantially the same as the general amount that we knew about, then the difference would not have been transmitted to us in Memphis.

Q Has Allenberg ever rejected a contract after it has been filled out and before it is sent to the farmer to be signed?

A We've rejected proposals for sale. But any contract that we have typed up ourselves for the purposes of entering into a contract—we've rejected proposals.

[fol. 112; Tr. p. 76]

We haven't rejected any contracts.

Q So the form that's filled out and sent to Mississippi is a proposal?

A It is a contract as far as we're concerned. We've agreed to enter into it or else we wouldn't have filled out the blank spaces in it.

Q I believe you stated you'd rejected some farmers on the basis of their farming practices?

A Proposals we would reject. A contract is a contract. Once we've agreed to it, orally, as far as we're concerned. It's a mere formality—

BY THE COURT:

I don't think that witness and counsel ought to quibble with themselves or with the Court. A contract, if made, is a contract. It may be breached, but it's hardly rejected. I wish you'd be more specific about what you're talking about.

BY MRS. GOLDMAN:

I'm trying to establish, Your Honor, about whether the printed form that they send to Mississippi—

BY THE COURT:

I think I understand what you're trying to bring out and I think the procedure has been pretty well developed by now.

CONTINUED EXAMINATION

BY MRS. GOLDMAN:

Q I would like to ask you—you say that your company has rejected solicited contracts on the grounds of agricultural practices, reputations of farmers and numerous other reasons. Who gives you the information

[fol. 113; Tr. p. 77]

about this?

A Generally, the local buyer and at times other people in Memphis or other localities that we might know of some specific detail that we wouldn't be interested in or vice versa, that we would be interested in.

Q No further questions.

(Witness excused.)

BY MR. MAYNARD:

We rest.

(Both sides rest)

(Off record Arguments)

BY MRS. GOLDMAN:

I now move the Court, on the evidence that's been submitted in this hearing on behalf of the complainant and the defense, that this cause of action against Mr. H. T. Pittman, be dismissed, on the grounds that the Allenberg Cotton Company is doing business in the State of Mississippi and is not qualified, under the statute, to so do without a certificate of authority.

BY THE COURT:

I'll hear you.

BY MR. MAYNARD:

That's what it's all about, Your Honor.

[fol. 114; Tr. p. 78]

BY THE COURT:

Do you care to present any authority or speak to your motion.

(Off record discussion)

COURT GIVES DECISION and requests Order in compliance, from the Complainant and Defendant.

HEARING CONCLUDED at 4:00 o'clock P.M. November 26, 1971.

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

[fol. 114a] (Title omitted in printing)

DECREE

This cause coming on this day to be heard on motion of complainant for temporary injunction against defendant, H. T. Pittman, as set forth in bill of complaint of complainant in this cause, and both parties appearing in Court and being represented by counsel, and the Court having considered the same is of the opinion that said temporary injunction should be granted on complainant's entering into bond of $10,000.00 payable according to law;

The Court finds, and adjudges, orders and decrees that the Allenberg Cotton Company is not doing or transacting business within the State of Mississippi under Section 5309-239 of the Mississippi Code of 1942, annotated, or any other statutes or case law in the State of Mississippi, and therefore may bring its cause of action in the courts of Mississippi and obtain such relief as it may be entitled to.

It is further adjudged, ordered and decreed that the motion of defendant to dismiss this cause of action be, and the same is hereby, overruled.

It is further hereby adjudged, ordered and decreed that the motion of complainant, Allenberg Cotton Company, in the above styled cause for temporary injunction against defendant, H. T. Pittman, be, and the same is hereby, sustained, and that the defendant, H. T. Pittman, his heirs and assigns, be, and they are hereby, enjoined from selling or delivering the cotton as described in the contract made an exhibit to bill of Complaint to any other party

other than to the complainant until further order of this Court.

It is further hereby adjudged, ordered and decreed that said injunction shall not go into effect until complainant has entered into bond as provided by law, and this decree.

[fol. 114b] It is further adjudged, ordered and decreed that the defendant, H. T. Pittman, provide the discovery asked for in the prayer of the complaint, and specifically provide to the complainant information as to the following:

1) The Number of bales produced on the land in question;

2) Class and grade and value of said cotton;

3) Location of said bales of cotton and the location of the warehouse receipts and class cards in connection therewith.

ADJUDGED, ORDERED and DECREED, on this the 26th day of November 1971.

/s/ Partee L. Denton
CHANCELLOR

[fol. 115]

COURT REPORTER'S CERTIFICATE AND COST BILL

I, Joyce M. Lanham, Official Court Reporter for the Seventh Chancery Court District, (2) of Mississippi, do hereby certify that the foregoing 78 pages contain a true and correct transcript of the testimony and evidence offered and received on the hearing in the foregoing cause, as the same was taken down by me in shorthand notes and by electric recorder at the time of the hearing and thereafter transcribed by me to the best of my ability, knowledge and belief.

I further certify that I have today filed the original and one copy of this transcript with the Chancery Clerk of Quitman County, Mississippi, and that I have notified all counsel of record of such filing of said transcript, being the following:

Mrs. Ellen E. Goldman, Marks, Mississippi

Mr. William R. Bradley
Mr. Billy Maynard — Clarksdale, Mississippi

I further certify that my fee for said transcript is the sum of $59.25.

Witness my hand, this the 4th day of April, 1972.

/s/ Joyce Lanham
Official Court Reporter
Seventh Chancery Ct. District (2)

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[fol. 117; Tr. p. 1]

IN THE CHANCERY COURT OF
QUITMAN COUNTY, MISSISSIPPI

Regular Term, February, 1972

(Title omitted in printing)

TRANSCRIPT

This case came on to be heard in regular term time of the Quitman County Chancery Court in Marks, Mississippi on the 14th day of February, 1972 at 10:30 o'clock A.M. Present and presiding was the Honorable Partee L. Denton, Chancellor for the Seventh Chancery Court District, Place Two, of Mississippi. The oral testimony and documentary evidence offered during the hearing is contained in this transcript.

[fol. 118; Tr. p. 2]

APPEARANCES:

For the Complainant: Mr. Billy Maynard
Attorney at Law
Clarksdale, Mississippi

Mr. William R. Bradley
Attorney at Law
Clarksdale, Mississippi

For the Defendant: Mrs. Ellen E. Goldman
Attorney at Law
Marks, Mississippi

[fol. 119; Tr. p. 3]

BY MR. BRADLEY:

Come now the parties for the complainant and the defendant and stipulate to the Court as follows: That the

complainant is entitled to recover in this cause and that the only issue is to the measure and extent of damages.
BY THE COURT:

It is in previous rulings of the Court on the plea that complainant was not entitled to seek relief in this court because it did not qualify to do business in the State of Mississippi. That issue and the right to raise that issue hereafter, in connection with this case, is reversed.

(Off record discussion)

BY MR. BRADLEY:

Comes now complainant and defendant and stipulate as follows, with reference to this cause:

1. That the order appearing in Cause No. 7643, Allenberg Cotton Company vs. H. T. Pittman, with reference to the jurisdiction of this matter wherein the Court decided that Allenberg Cotton Company could proceed with its litigation in the State of Mississippi and using the State Courts, also applies in Cause No. 7642, Allenberg Cotton Company vs. Ben E. Pittman, as the testimony introduced in the H. T. Pittman case as to whether or not the complainant has the right to bring a cause of action in the State courts would be the same in both cases. Therefore, the parties stipulate that the finding of the Court in the H. T. Pittman

[fol. 120; Tr. p. 4]

Cause, No. 7643 applies with equal force and effect in the Ben E. Pittman case, No. 7642 and that the effective date as to the Order will be considered to be the date of the decree after the hearing being held today on February 14th, 1972.

(2) The parties stipulate that the only issue before the Court today in the Ben E. Pittman cause, being No. 7642,

is the measure and extent of damages as it is agreed that complainant is entitled to recover.

MR. JERRY HILL:

after first being duly sworn, upon oral examination testifies on behalf of the complainant as follows, to-wit:

DIRECT EXAMINATION

BY MR. BRADLEY:

Q State your name to the Court?
A Jerry L. Hill.
Q Occupation?
A Cotton buyer. Allenberg Cotton Company.
Q How long have you been so engaged?
A 12 years.
Q What are your duties as a cotton buyer?
A In charge of buying cotton in the Memphis territory which consists of Mississippi, Arkansas, Tennessee and Missouri.
Q And what does a buyer specifically do, in addition to that?

[fol. 121; Tr. p. 5]

A (Witness hesitates)
Q We withdraw that question and ask another one. In your work as a cotton buyer, is it necessary that you be familiar with the market prices paid for cotton in this particular territory?
A Definitely.
Q And are you so familiar and have you been throughout the last 10 or 12 years?
A Yes, sir.
Q I call your attention to the contract entered into

between Ben E. Pittman and Allenberg Cotton Company, executed on January 28, 1971, and ask you to state to the Court what the terms of this contract are with reference to the purchase of cotton. First, I'd like for you to say if that is the contract.

A This is the contract. Well, in relation to the price of cotton, the cotton is bought on a micronaire stipulation and it so states in the contract here that the base price for the cotton would be any cotton that falls in the 3-3 to 5-0 micronaire range would be at 22¢. The price is reduced according to micronaire and according to whether they have any grass or reduced cotton in their crop.

Q Assuming that on November 9th, 1971, the defendant sold 534 bales of cotton at 28.90 to a merchant in Greenwood, Mississippi, what would the difference be in the price that you would have acquired the cotton under this particular contract and the price that was paid to the defendant at the sale in Greenwood. Have you computed that?

[fol. 122; Tr. p. 6]

A It would be 690 points—690 points equals $30.00 per bale. Each point represents 5¢ is what it amounts to. It would be $34.00 a bale times 534 bales which he sold, would be $18,156.00.

Q Since it is admitted in Court by the Answer that this was the transaction, what has been the loss to Allenbert, in dollars and cents?

A $18,156.00.

Q That's all the questions we have of this witness.

CROSS EXAMINATION

BY MRS. GOLDMAN:

Q Mr. Hill, are you familiar with the market price

during the month of October and the beginning of November, on cotton?

A I couldn't tell you right here what the price was at that time, no. Without referring to the market sheet of that date.

Q As you recall was there any great variation of price around the first two weeks preceding November 1st? Did the market stay steady during that period?

A It would be hard for me to answer the question without referring to the market sheet.

Q You gave us the price as of what day in November?

A I gave you the price that it was actually sold—November 9th.

Q I would like to ask you at this time about the contract itself. The contract itself shows that you signed this contract on the date that Mr. Pittman signed it. Is that correct?

[fol. 123; Tr. p. 7]

A Right.

Q Did you sign it at the same time that Mr. Pittman signed it?

A I think this has already been established that the contract had already been approved and accepted in Memphis and was brought to Marks for Mr. Pittman's signature and he signed in Mr. Covington's office.

Q And you signed in Mr. Covington's office?

A Right. On January 28th.

Q At the time that Mr. Pittman signed the contract?

A Right.

Q Did the contract become binding at that time?

A The contract was already binding. I mean this had been agreed upon. The contract had to be made up and brought for his signature.

Q The contract was binding without signature?

A Oh no. He read the contract over and if he had not wanted to sign the contract, he did not have to.

Q Both of you signed it in Mr. Covington's office?

A Right.

Q That's all.

(Witness excused.)

MR. W. D. CRAWFORD:

after first being duly sworn, upon oral examination testified on behalf of the complainant, as follows, to-wit:

DIRECT EXAMINATION

BY MR. BRADLEY:

Q State your full name?

A W. D. Crawford.

[fol. 124; Tr. p. 8]

Q And your position with the complainant?

A Secretary-Treasurer.

Q How long have you been with the company?

A Over 30 years.

Q Are you familiar with the buying and selling of cotton in the Memphis territory?

A I am.

Q Is Quitman County part of the Memphis Territory?

A Yes.

Q Have you bought and sold cotton yourself in the Memphis territory as part of this organization?

A Not actually, no.

Q Are you familiar with the prices that have been paid in this territory?

A Yes.

Q Are you familiar with the prices that complainant has bought cotton in the last five years in this territory?

A Yes.

Q You heard the testimony of Mr. Hill with reference to the price of cotton and the terms and conditions of this contract and the amount that he stated that the company lost as a result of the failure of the defendant to deliver cotton as provided in the contract, have you not?

A Yes.

Q Has the testimony that Mr. Hill — is what he said true and correct?

A Yes.

Q That's all we have.

[fol. 125; Tr. p. 9]

CROSS EXAMINATION

BY MRS. GOLDMAN:

Q I show you here the subject contract and I would like to ask you as a representative of Allenberg Cotton Company, to state when this contract became binding ---------- as you heard the testimony of Mr. Hill. He signed this contract at the Covington Cotton Company in Marks, Mississippi, at the same time that Ben E. Pittman signed it. Did this contract become binding from the time of signature?

A Yes.

BY MR. BRADLEY:

We object to that. We don't think that he knows the answer to the legal conclusion.

BY THE COURT:

That is a legal conclusion, but I'll reserve the ruling.

Q That's all I have.

(Witness excused.)

Motion to Amend Bill of Complaint

BY MR. BRADLEY:

We have no further witnesses.

BY MRS. GOLDMAN:

Defendant rests, Your Honor.

BY MR. BRADLEY:

Comes now the parties and stipulate that the motion to amend complaint in cause 7643 and 7642 was approved by the Chancellor on the 19th day of November, 1971 in each of the two cases and may be entered now for then.

[fol. 125a]

EXHIBIT #1 By Agreement
2/14/72

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

MOTION TO AMEND BILL OF COMPLAINT

Now comes complainant and respectfully requests this Honorable Court to be allowed to amend the first sentence of paragraph 3 of said bill of complaint to read as follows:

"The complainant and defendant signed the written contract in Marks, Mississippi on January 28, 1971, after its prior approval by the complainant in its office in Memphis, Tennessee, which approval was necessary for the validity of said agreement. Said agreement is made an Exhibit to this petition wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 700 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

Respectfully submitted,

MAYNARD, FITZGERALD, MAYNARD AND BRADLEY

/s/ By Wm. H. Maynard
Attorneys for Complainant

[fol. 125b]

EXH #1 (Cont'd)

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

AMENDMENT TO BILL OF COMPLAINT

On motion of complainant, the following amendment is made to complainant's bill of complaint in the above styled cause:

The first sentence of paragraph 3 of said bill of complaint is amended to read as follows:

"The complainant and defendant signed the written contract in Marks, Mississippi, on January 28, 1971, after its prior approval by the complainant in its office in Memphis, Tennessee, which approval was necessary for the validity of said agreement. Said agreement is made an Exhibit to this petition wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 700 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

MAYNARD, FITZGERALD, MAYNARD & BRADLEY

By /s/ Wm. H. Maynard
Attorneys for Complainant

[fol. 125c]

Exh #1 (Cont'd)

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

DECREE ALLOWING AMENDMENT TO BILL OF COMPLAINT

This cause coming on this day to be heard on motion of complainant that it be allowed to amend the first sentence of paragraph 3 of its bill of complaint to read as follows:

"The complainant and defendant signed the written contract in Marks, Mississippi, on January 28, 1971, after its prior approval by the complainant in its office in Memphis, Tennessee, which approval was necessary for the validity of said agreement. Said agreement is made an Exhibit to this petition, wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 700 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

And the Court being of the opinion that said motion should be allowed, it is therefore, hereby adjudged, ordered and decreed that complainant be, and it is hereby, allowed to amend the first sentence of paragraph 3 of its bill of complaint to read as follows:

"The complainant and defendant signed the written contract in Marks, Mississippi, on January 28, 1971, after its prior approval by the complainant in its office in Memphis, Tennessee, which approval was necessary for the validity of said agreement. Said agreement is made

an Exhibit to this petition, wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 700 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

ADJUDGED, ORDERED, AND DECREED, this the 19th day of November 1971.

_____

CHANCELLOR

[fol. 125d; Tr. p. 11]

EXHIBIT NO. 2 (by stipulation)

[fol. 125e]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

MOTION TO AMEND BILL OF COMPLAINT

Now come complainant and respectfully requests this Honorable Court to be allowed to amend the first sentence of paragraph 3 of said bill of complaint to read as follows:

"The complainant and defendant signed the written contract in Marks, Mississippi, on January 28, 1971, after irs prior approval by the complainant in its office in Memphis, Tennessee which approval was necessary for the validity of said agreement. Said agreement is made an Exhibit to this petition, wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 500 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

Respectfully submitted,

Maynard, Fitzgerald, Maynard & Bradley

By /s/ Wm. H. Maynard
Attorneys for Complainant

[fol. 125f]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

DECREE ALLOWING AMENDMENT TO BILL OF COMPLAINT

This cause coming on to be heard on motions of complainant that it be allowed to amend the first sentence of paragraph 3 of its bill of complaint to read as follows:

"The complainant and defendant signed the written contract in Marks, Mississippi, on January 28, 1971, after its prior approval by the complainant in its office in Memphis, Tennessee which approval was necessary for the validity of said agreement. Said agreement is made an Exhibit to this petition, wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 500 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

And the Court being of the opinion that said motion should be allowed, it is therefore, hereby adjudged, ordered and decreed that complainant be, and it is hereby, allowed to amend the first sentence of paragraph 3 of its bill of Complaint to read as follows:

"The complainant and defendant signed the written agreement in Marks, Mississippi, on January 23, 1971, after its prior approval by the complainant in its office in Memphis, Tennessee which approval was necessary for the validity of said agreement. Said agreement is made an Exhibit to this petition, wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 500 acres situated in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

ADJUDGED, ORDERED AND DECREED this the 19th day of November 1971.

_____
CHANCELLOR

[fol. 125g]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing - H. T. Pittman, Defendant)

AMENDMENT TO BILL OF COMPLAINT

On motion of complainant, the following amendment is to be made to complainant's bill of complaint in the above styled cause:

The first sentence of paragraph 3 of said bill of complaint is amended to read as follows:

"The complainant and defendant signed the written contract in Marks, Mississippi, on January 28, 1971, after its prior approval by the complainant in its office in Memphis, Tennessee which approval was necessary for the validity of said agreement. Said agreement is made

an Exhibit to this petition, wherein complainant agreed to purchase and defendant agreed to sell all cotton produced on approximately 500 acres in Quitman County, Mississippi, under the terms and conditions as set forth in the contract."

MAYNARD, FITZGERALD, MAYNARD & BRADLEY

BY /s/ Wm. H. Maynard
Attorneys for Complainant

[fol. 125h]

C'plainant
EXHIBIT
2-17-72
IML

U. S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the undersigned does hereby make, constitute, and appoint

Ben E. Pittman, of Darling, MS
Quitman County, State of Mississippi

the true and lawful attorney for and in the name, place, and stead of the undersigned in connection with the the [sic] following agricultural programs, numbered 1 , under the jurisdiction of the United States Department of Agriculture, administered through ASC County Committees:

1. All Programs
2. Price Support Programs
3. National Wool Programs
4. Emergency Feed Programs
5. Soil Bank Programs

6. Agricultural Conservation Programs
7. Marketing Quota and Acreage Allotment Programs
8. Sugar Programs
9. Naval Stores Conservation Programs
10. Farm Storage Facility Loan Programs
11. Purchase and Diversion Programs Under Section 32 of P.L. 320, 74th Congress
12.

The undersigned gives and grants unto said attorney full authority and power to do and perform all and every act and thing whatsoever requisite and advisable to be done under such programs, including but not limited to, the selling and delivery of a commodity, the signing of an application, the borrowing of money, the receiving of payments, the executing of real or chattel mortgages, the signing of promissory notes, loan and pledge agreements, and all other applicable documents, and the making of reports, as fully to all intents and purposes as the undersigned might or could do if personally present, hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof.

This power of attorney shall remain in full force and effect until written notice of its revocation has been duly served upon the Quitman ASC County Committee, Marks, Mississippi.

(Over)

[fol. 125i]

The foregoing power of attorney set forth on the reverse side of this page is signed and dated at Marks, Mississippi, this 4 day of March, 1968.

Witnesses: Signatures:

/s/ Mildred L. Greene /s/ H. T. Pittman

ATTEST: (Affix Corporate Seal)

Signature of Corporate Principal[1]

_____
(corporate principal)

_____ By _____
(signature of attesting officer)

_____
(official title)

ACKNOWLEDGMENT[2]

---

[1] If a corporate principal, sign and affix seal in appropriate places; if no corporate seal, so state.

[2] Insert here and have executed the form of acknowledgment required by law of State where property is located with respect to which power of attorney is given.

[fol. 126; Tr. p. 12]

There being no further testimony, the hearing is concluded.

COURT REPORTER'S CERTIFICATE

I, Joyce Lanham, Official Court Reporter for the Seventh Chancery Court District, Place two of Mississippi, do hereby certify that the foregoing 11 pages and this page contain a true and correct transcript of the testimony and evidence offered and received on the hearing in the fore-

going cause, as the same was taken down by me in shorthand notes and by electric recorder at the time of the hearing and thereafter transcribed by me to the best of my ability, knowledge and belief.

I further certify that I have today filed the original and one copy of this transcript with the Chancery Clerk of Quitman County, Mississippi and that I have notified all counsel of record of such filing of said transcript, being the following:

Mrs. Ellen E. Goldman, Marks, Mississippi
Mr. William R. Bradley, Clarksdale, Mississippi
Mr. Billy Maynard, Clarksdale, Mississippi

I further certify that my fee for said transcript is the sum of $9.00.

Witness my hand, this the 4th day of April, 1972.

/s/ Joyce Lanham
Official Court Reporter
Seventh Chancery Ct. District (2)

[fol. 126a]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

DECREE

This cause coming on this day to be heard at a day of the Regular Term of the Chancery Court of Quitman County, Mississippi, on Bill of Complaint of Complainant, Allenberg Cotton Company, against Defendant, Ben E.

Decree

Pittman, praying among other things for Defendant to pay for damages alleged to be sustained by Complainant for the Defendants having failed to comply with the cotton sales contract sued upon, and the parties having appeared in Court in person and by their attorneys, and having agreed that Complainant was entitled to recover damages for the failure of Defendant to deliver said cotton to Complainant and that the only question at issue was the amount of damages which Complainant sustained because of Defendant's failure to deliver said cotton, and the Court having heard the evidence with reference to said damages sustained, and the only evidence produced having been by complainant, and said evidence having shown conclusively that there was a damage sustained by Complainant by reason of Defendant's failure to deliver said cotton $18,156.00; and the Court being of the opinion that a decree should be rendered in said amount in favor of Complainant against Defendant.

It is, therefore, hereby adjudged, ordered and decreed that Complainant Allenberg Cotton Company be, and it is hereby awarded damages in the amount of $18,156.00 against Defendant Ben E. Pittman, and all costs of Court.

ADJUDGED, ORDERED and DECREED on this the 14 day of February, 1972.

/s/ Partee L. Denton

[fol. 126b]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

PETITION FOR APPEAL

Comes now Ben E. Pittman, the defendant in the above styled and numbered cause and states that there was a judgment or decree rendered against him, from which he desires to prosecute an appeal to the Supreme Court, and he desires to prosecute an appeal without supersedeas.

/s/ Ellen E. Goldman
Attorney for Defendant

FILED
April 6, 1972
James A. Martin Chancery Clerk
By J.A.M. D.C.

[fol. 126c]

ELLEN E. GOLDMAN
ATTORNEY AT LAW
231 CHESTNUT
MARKS, MISSISSIPPI 38646

APRIL 6, 1972

FILED
APRIL 7, 1972
James A. Martin, Chancery Clerk
By J.A.M. D.C.

Mr. James A. Martin
Chancery Clerk of Quitman County
Marks, Mississippi 38646

No. 7642

RE: Allenberg Cotton Company
Vs
Ben E. Pittman

Dear Mr. Martin:

An appeal bond has been filed in the above cited case. Will you please transcribe your records and file the complete record of the Ben E. Pittman case cited above, No. 7642, with the Supreme Court of the State of Mississippi. As a part of the complete record I request that you include the transcript of the preliminary hearing in the H. T. Pittman case, No 7643, which was made applicable to the case No 7642 by direction of the Court.

Thank you very much.

Sincerely yours,

/s/ Ellen E. Goldman
Ellen E. Goldman
Attorney at Law

EEG:dm

[fol. 127]

IN THE CHANCERY COURT OF QUITMAN COUNTY, MISSISSIPPI

(Title omitted in printing)

APPEAL BOND WITHOUT SUPERSEDEAS

KNOW ALL MEN BY THESE PRESENTS, that BEN E. PITTMAN, as principal, and Lloyd C. Lee Jr. and H. T. Pittman, as Sureties, are firmly held and bound unto ALLENBERG COTTON COMPANY. Complainant, in the

penal sum of Five Hundred and No/100 ($500.00) Dollars, to insure cost of the appeal in this case for which payment well and truly to be made we bind ourselves and our successors forever.

The condition of the foregoing obligation is such that, whereas, in the Chancery Court of Quitman County, Mississippi, in the February term of court thereof on the 14th day of February, 1972, judgment against the defendant was rendered in the above styled and numbered cause in favor of ALLENBERG COTTON COMPANY, and said defendant has prayed for and obtained an appeal to the Supreme Court of the State of Mississippi.

NOW, THEREFORE, if the principal obligor shall prosecute said appeal with effect and shall pay all costs of court if the same be affirmed, then this obligation would be void; otherwise, the same shall remain in full force and effect.

GIVEN UNDER MY HAND this the 13th day of March, 1972.

/s/ Ben E. Pittman
BEN E. PITTMAN, Principal

FILED
Mar 13 1972
James A. Martin,
Chancery Clerk
By JAM D.C.

/s/ Lloyd C. Lee, Jr.
Surety

/s/ H. T. Pittman
Surety

APPROVED BY CHANCERY CLERK:

/s/ James A. Martin

[fol. 128]

CERTIFICATE
of
APPEAL AND COST

I, JAMES A. MARTIN, Clerk of the Chancery Court of Quitman County, Mississippi hereby certify the foregoing is a true and correct copy of instruments in the appeal of Cause Number 7642, ALLENBERG COTTON COMPANY versus BEN E. PITTMAN, as per letter to Court Reporter dated February 24, 1972 and to Chancery Court Clerk dated April 6, 1972, said cause docketed in General Chancery Court Docket Number 14 at Page 477 of the records of Quitman County, Mississippi.

I further certify the Court Cost in appeal for

128 Pages -	$68.65
Bindery Fee (inclosed) - - - - - - - - - - - -	2.50
Court Reporter's Cost - - - - - - - - - - - -	68.25
Total	$139.40

This the 10th day of May 1972,

/s/ James A. Martin
JAMES A. MARTIN, Chancery Clerk

The opinion and Judgment of the Supreme Court of Mississippi is included in the Jurisdictional Statement, page A. 1, previously filed.

The Order Certifying Issues Decided in the Supreme Court of Mississippi is found in the Jurisdictional Statement at pages A. 12-A. 13.